CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disageeement to the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 3128) entitled "An Act to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process", and concur therein with an amendment:

The Senate resumed consideration of the House message.

Mr. DOMENICI. Mr. President, when the 1st session of the 99th Congress adjourned last December we left unfinished a major piece of deficit reduction legislation. We return to that legislation today and, I hope, we will complete action on it quickly.

I do not wish to expend a great deal of time reviewing the history of this legislation, which is commonly referred to as the 1985 reconciliation bill, but I think it would be helpful to all of us, and to those who might be listening for the first time, to quickly trace this legislation's torturous journey to the Senate floor today.

The first concurrent resolution on the budget for fiscal year 1986, adopted last August 1, agreed on a blueprint to lower deficits over the following 3 years by $276.2 billion. Of this total deficit reduction, $75.5 billion was to be achieved through the reconciliation procedure authorized in the Budget Act. The budget resolution included instructions to 11 Senate and 14 House committees requiring them to recommend changes in laws in their jurisdiction which would reduce Federal outlays by $67.1 billion over the next 3 years. In addition to outlay reductions, the Senate Finance and House Ways and Means Committees were instructed to recommend revenue increases totaling $8.4 billion over the same time period.

All reconciled committees were instructed to report their recommended legislative changes to their respective Budget Committees. The Budget Committees of both Chambers combined these recommended legislative changes into a single bill and reported their respective bills to their houses for full consideration.

The Senate first took up its reconciliation bill on October 15, 1985, and passed it about 1 month later on November 14, 1985. A massive House-Senate conference with over 31 subconferences and nearly 300 Senate and House Members was convened on December 6 to work out differences between the House and Senate passed bills. A conference report was filed on December 19, passed the Senate, but was quickly rejected by the House and amended by them to strike legislation in the conference report concerning the Superfund Cleanup Program. And, after a couple more back and forths, on December 20 the Senate rejected a motion to recede to the House and a new conference was ordered.

A number of my colleagues concluded that night last December that the reconciliation bill would never come before this Chamber again. I disagreed then and am happy to be back here today bringing a completion to this legislation.

Let me also make it clear that while the original bill when it was brought before the Senate was estimated to save over $73 billion over the following 3 years, the estimates of the bill now before us have been substantially reduced. One should not despair, however, because of this $73 billion in the original savings estimate, nearly $49 billion was achieved through other measures such as the final farm bill, various appropriation and separate authorizing bills.

So the bill now before us, as amended today, is estimated to reduce the deficit by about $25 billion over the next 3 years.

Many Members have made great concessions to put together this final offer. Senator ROTH has agreed to drop the TAA tariff and program expansion provisions and Senator PACKWOOD has agreed to drop Superfund taxes and a number of Medicare expansion provisions. This offer, if adopted by the House without further amendment, would be acceptable to the administration—that is a major concession.

But, we should not focus exclusively on the modifications to the conference report. We should reflect on the bulk of the bill where we, the House, and the President agree, such as: Banking Committee reforms for rural housing programs; Armed Services reform of the military health system; Agriculture reform of the Tobacco Price Support Program; Commerce Committee reforms for Amtrak, FCC, and public broadcasting; Labor and Human Resources reforms of ERISA and increases in private pension insurance premiums, and reforms of the GSL program; and Veterans Committee reforms of the VA health care system.

These are just a few of the many tough decisions that were made and agreements reached. We need this package to reduce the deficit and renew public confidence in the Government's ability to control spending. We are building a three-legged stool this year—the March 1 sequester order was the first leg, this reconciliation package is the second leg, and the fiscal year 1987 budget resolution and reconciliation is the third leg. However, unless we build all three legs on that stool, I am afraid many of us may be unseated. The projected fiscal year 1987 deficit is $183 billion, the target is $144 billion—and that is a big gap to fill.

Quite frankly, I need this package to do my job as chairman of the Budget Committee. I need $5.9 billion in savings in fiscal year 1987 to help put together a budget resolution that hits the Gramm-Rudman-Hollings deficit target.

Senators had to cast some very difficult votes last year to produce this reconciliation package. It would not be fair to make them go through the same set of votes just to get the same savings this year in the fiscal year 1987 budget.

I am delighted after weeks and hundreds of hours of negotiation that we bring the fiscal year 1986 budget deliberations to a conclusion.

Mr. President, I ask unanimous consent to print in the RECORD a table showing the current savings from the Senate amended reconciliation bill.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

RECONCILIATION SAVINGS FROM CBO'S FINAL BASELINE FOR HOUSE BILL AS AMENDED BY THE SENATE, FISCAL YEAR 1986–89

[In millions of dollars]

	Fiscal year—				Total 1986–89
	1986	1987	1988	1989	
Reconciliation totals:					
Reductions in outlays	−5,976	−6,816	−7,453	−8,056	−28,301
Increase in revenues	765	2,503	2,790	2,895	8,953
Reduction in deficit	−6,741	−9,319	−10,243	−10,951	−37,254
Reduction excluding GRS	−6,741	−5,947	−5,668	−6,376	−24,732
Subconference No. 1—					
Agriculture:					
Export sales of dairy products	(1)	(1)	(1)	(1)	(1)
Agricultural credit	(1)	(1)	(1)	(1)	(1)
Subconference No. 2—					
Tobacco tax earmarking: Cigarette tax earmarking	(2)	(2)	(2)	(2)	(2)
Subconference No. 3—					
Tobacco support program: Tobacco program improvements	−5	−70	−230	−290	−595
Subconference No. 4—					
3d-party reimbursement		−16	−73	−123	−212
Subconference No. 5—					
Champus/Champva: Medicare reimbursement for champus patients					
Subconference No. 6—					
Banking and housing:					
Rural housing loans		−298	−815	−278	−1,391
Public housing operating subsidies					
Section 108 loan guarantees	−15	−56	−94	−106	−271
Public housing debt forgiveness					
Total, spending reduction	−15	−354	−909	−384	−1,662
Subconference No. 7—					
Railroads and USTTA:					
Amtrak					
Local rail service assistance					
Total, spending reduction					
Subconference No. 8—					
FCC and CPB:					
CPB and FCC authorizations					

The second admonition is far broader than the terms of the former Article 15.24, Texas Election Code, which merely prohibits influencing a voter while "in the room where an election . . . is being held . . ."

The fourth admonition, by being taken out of its proper context, also is incorrect. Since the signs were obviously to be visible to voters at a polling place, they implied that the voters might be responsible for the conduct of the election workers. The admonition also is beyond the scope of Article 15.42, Texas Election Code, for the reason that the statute only prohibits the affirmative conduct of aiding, advising or procuring certain illegal voting.

I have been advised that in 1982, then Secretary of State David Dean was requested to approve the placement of the signs. He refused to approve the placement and instructed Dallas County officials that the signs should not be posted. He expressed concerns about potential intimidation of Dallas County voters.

I personally observed the signs at my polling place in East Dallas in 1982 and viewed them with alarm. There is no doubt in my mind that the signs were placed there to intimidate minority voters.

The contents of the sign appear to be so far beyond the scope of authentic Texas law that the good faith of any attorney who might have participated in their placement would be subject to inquiry.

Sincerely,

JIM MATTOX,
Attorney General.

JUDICIAL NOMINATIONS

Mr. BYRD. Mr. President, several days ago, the junior Senator from Illinois [Mr. SIMON] performed an exceptional service when he addressed the Senate on the subject of the Senate's role in connection with judicial appointments. From his position as the Democratic member of the Judiciary Committee who has the responsibility for conducting the initial screening of all judicial nominations, Senator SIMON has a unique perspective on this subject. His views and his comments and his judgment are of enormous benefit to us all as we strive faithfully to fulfill our advice and consent responsibilities under the U.S. Constitution.

I commend to my colleagues the thoughtful and incisive remarks of our colleague from Illinois on this subject which appear at pages S2331–S2335 of the CONGRESSIONAL RECORD of March 10.

I was astonished to discover one set of statistics which were included in Senator SIMON'S presentation. First, by way of background, most of us are probably aware of the role which is played by the American Bar Association in connection with judicial appointments. For 34 years, the ABA's standing committee on the Federal Judiciary has been consulted by every President with respect to almost every judicial appointment. For even longer—for 38 years—the Senate Judiciary Committee has sought that ABA committee's opinion with respect to every single judicial nomination.

The ABA's committee provides ratings to the Senate on all judicial nominees . . . ratings of "exceptionally well qualified," "well qualified," "qualified," and "not qualified." Since January 1985, one-half of all the individuals who were nominated for judgeships on U.S. Courts of Appeals received only the minimum passing grade of qualified, and of these, about three-fourths were found by a minority of the ABA's committee to be not qualified at all.

Just what are these ratings supposed to relate to? First of all, the ABA's standing committee on the Federal Judiciary acknowledges that they do not "investigate the prospective nominee's political or ideological philosophy except to the extent that extreme views on such matters might bear upon judicial temperament or integrity." Rather, the committee's evaluation of nominees "is directed primarily to professional qualifications—competence, integrity, and judicial temperament."

I think that the fact that one-half of the Reagan nominations to courts of appeals over the past year received only qualified ratings by the ABA's committee, and that about three-fourths of those nominees were found by a minority of the ABA's committee to be not qualified at all, constitute disturbing statistics. These are individuals who are being entrusted with lifetime responsibilities to hear and resolve some of the most significant and pressing issues facing our Nation. They interpret our laws, they breathe life into our Constitution. Every day they deal with the lives and the liberties of vast numbers of our citizens. They affect our business, social and family activities, our homes and our pocketbooks, our property and our children. Surely the men and women who preside over these matters must be of the very highest quality that may be found. And we in the Senate have the constitutional responsibility to pass on these nominees' qualifications.

Mr. President, the exercise of our responsibility to advise and consent to these nominations is only effective if it is informed. My colleagues are aware that I have expressed concern about this subject before. I have authored proposed legislation requiring that the Senate get all the same FBI information that the White House gets with respect to nominees. And I have held up the entire Executive Calendar when I saw the administration trying to short circuit our advice and consent responsibilities by making nonurgent recess appointments during a relatively brief intrasession adjournment.

I mention these actions on my part only to point out that it is my feeling that the framers of the Constitution intended for us to take our advice and consent function very seriously.

But today, I would like to focus not on those issues, although they still rank extremely high in importance. Today, I would like to address just the subject of the ABA's ratings, in view of the statistics I have described.

I would like to first read into the record a sample of the kind of rating letter we receive from the ABA. This particular letter is the one we received with respect to Sidney Fitzwater, who has been nominated by the President to be a U.S. district judge for the northern district of Texas. It is addressed to Senator THURMOND, chairman of the Judiciary Committee, and reads as follows:

> Thank you for affording this committee an opportunity to express an opinion pertaining to the nomination of Sidney A. Fitzwater for appointment as judge of the United States District Court for the Northern District of Texas.
>
> A majority of our committee is of the opinion that Judge Fitzwater is "qualified" for this appointment. The minority found him to be not qualified.

The letter is signed by Robert B. Fiske, Jr., as chairman of the ABA's standing committee on the Federal Judiciary.

Now, I do not mean to suggest that it is not helpful to know that a majority of the ABA committee found Mr. Fitzwater to be qualified and a minority found him to be not qualified. But none of us has any way of knowing why the ratings came out the way they did. It seems to me it would have been extremely helpful to know, if it were the case, that a minority of the ABA committee found Mr. Fitzwater not qualified because he was too young, or he had too little trial experience, or he lacks patience, or he has a quick temper—or whatever the reason or reasons may be. I think we should have that kind of information to assist us in the discharge of our responsibilities.

I intend to take this subject up with ABA officials, urging them to give us a little bit more help. We need their assistance. After all, the ABA's process includes contacting the lawyers who are best acquainted with the nominee's character and temperament, his integrity and his competence. We are not seeking the identities of the individuals who are contacted by the ABA. We respect the confidentiality of those who commented on a particular nominee's qualifications. But I do believe that if we are to continue the process of seeking and receiving ABA ratings, we must take steps to make those ratings more meaningful. I trust the ABA will understand our effort.

I know that the Senator from Illinois has tried without success to raise this and some related questions with the ABA's committee in the past. I just want to lend my support to his effort and to assure him that as far as the Democratic leader is concerned, he is right on target.

RECONCILIATION SAVINGS FROM CBO'S FINAL BASELINE FOR HOUSE BILL AS AMENDED BY THE SENATE, FISCAL YEAR 1986–89—Continued

[In millions of dollars]

	Fiscal year—				Total 1986–89
	1986	1987	1988	1989	
Federal Communications Commission [FCC]	0	−15	−36	−35	−51
Total, spending reduction	0	−15	−36	−35	−86
Subconference No. 9—Water/transportation programs:					
Ship construction differential subsidies					
NOAA fees	−7	−19	−23	−24	−73
NOAA authorizations					
Boat safety	−6	−5	−3	−1	−15
Coastal block grants					
Total, spending reduction	−13	−24	−26	−25	−88
Subconference No. 10—Pipeline programs:					
Pipeline user fees	−9	−9	−9	−10	−37
Subconference No. 11—Energy programs:					
Strategic petroleum reserve	55				55
Synfuels					
Shared-energy savings					
Biomass loan guarantees					
Total, spending reduction	55				55
Subconference No. 12—Uranium enrichment and FERC: Uranium enrichment			−21	−36	−57
Subconference No. 13—Outer Continental Shelf [OCS]	−4,946	−140	2,664	1,270	−1,152
Subconference No. 14—Highway programs: Federal-aid highways	30	500	150	150	830
Subconference No. 15—NRC fees	0	−81	−87	−98	−266
Subconference No. 16—Medicare pt. A and extended coverage:					
Spending reductions: Medicare pt. A	−9	−690	−1,015	−1,205	−2,919
Medicare pt. A (offsetting receipt)	1	5	5	5	16
Revenue changes: Extend medicare coverage for State and local workers (revenue increases)	22	178	321	460	981
Subconference No. 17—Medicare pt. B	−430	−842	−1,390	−1,350	−4,012
Subconference No. 18—Medicaid and MCH	36	55	55	65	211
Subconference No. 19—Private health insurance: Extend private health insurance coverage	[3]	[3]	[3]	[3]	[3]
Subconference No. 20—PBGC and ERISA: Pension Benefit Guarantee Corporation [PBGC]	−155	−217	−236	−138	−746
ERISA					
Total, spending reduction	−155	−217	−236	−138	−746
Subconference No. 21—Income security, trade, and other:					
Spending reductions: AFDC and SSI	1	3	1	1	6
Foster care and adoption assistance	1	78	48	3	130
Social security	2	4	4	4	14
Unemployment compensation	−1	−1	−1	−2	−5
Trade adjustment assistance	80	109	113	117	419
Custom fees	−25	−220	−230	−240	−715

RECONCILIATION SAVINGS FROM CBO'S FINAL BASELINE FOR HOUSE BILL AS AMENDED BY THE SENATE, FISCAL YEAR 1986–89—Continued

[In millions of dollars]

	Fiscal year—				Total 1986–89
	1986	1987	1988	1989	
Additional customs personnel					
Additional IRS personnel					
ITC authorization					
TAA authorization					
Total, spending reduction	58	−27	−65	137	103
Revenue increases: Increase Customs collections					
Increase IRS collections					
Total, revenue increases					
Subconference No. 22—Revenues:					
Tobacco excise tax	762	1,697	1,701	1,716	5,876
Superfund excise tax					
Limit income averaging	133	541	589	637	1900
Research and development tax allocation moratorium	−191	−96			−287
Railroad unemployment insurance tax		101	98	4	203
Tax railroad retirement benefits like Social Security	28	58	63	66	215
Coal excise tax	15	35	37	38	125
Alternate minimum tax for insolvents	−3	−9	−16	−23	−51
Trade adjustment assistance import tax					
Gulf coast waste disposal authority to issue IDB's	−1	−2	−3	−3	−9
Totala, revenue increases	743	2,325	2,469	2,435	7,972
Subconference No. 23—General revenue sharing		−3,372	−4,575	−4,575	−12,522
Subconference No. 24—Federal pay and benefits:					
Civilian agency pay					
2,087-hr workyear					
Postal Service programs					
FEHBP rebate		−292			−292
FEHBP cap					
Total, spending reduction		−292			−292
Subconference No. 25—Administrative savings: Motor vehicle fleet reductions					
Subconference No. 27—Education and labor programs:					
Walsh-Healey overtime provision					
Guaranteed student loans	−300	−170	−265	−192	−927
Total, spending reduction	−300	−170	−265	−192	−927
Subconference No. 29—SBA programs:					
SBA business programs	−98	−354	−365	−96	−913
SBA disaster program	−128	−356	−563	−627	−1,674
Total, spending reduction	−226	−710	−928	−723	−2,587
Subconference No. 30—Veterans' programs:					
Health care reforms	−48	−347	−462	−499	−1,356

RECONCILIATION SAVINGS FROM CBO'S FINAL BASELINE FOR HOUSE BILL AS AMENDED BY THE SENATE, FISCAL YEAR 1986–89—Continued

[In millions of dollars]

	Fiscal year—				Total 1986–89
	1986	1987	1988	1989	
Reduced compensation COLA					
Studies					
Total, spending reduction	−48	−347	−462	−499	−1,356
Comparison of House and Senate reconciliation savings: [4]					
House savings	−6,610	−6,008	−5,389	−6,362	−24,369
Senate savings	−6,741	−5,947	−5,668	−6,376	−24,732
Difference	−131	61	−279	−14	−363

[1] Savings in farm bill.
[2] Budget neutral provision.
[3] Savings estimated by CBO. Savings exclude GRS.

Note.—All estimates were prepared by CBO. Savings are measured against their final (postsequester) February baseline. Fiscal year 1986 estimates assume a Mar. 1, 1986, effective date unless otherwise stated in the legislation. Only direct spending is counted (authorizations are not).

Mr. DOMENICI. I yield the floor.

Mr. CHILES. Mr. President, of course I am pleased we are about to act on the reconciliation bill.

While we cannot take much pride in the length of time it has taken to reach this point, I think we have at least shown a new level of perseverance in the fight to cut the deficit.

Our work in passing this bill will make a reduction of at least $5 billion in the deficit. It shows that Gramm-Rudman-Hollings has had an impact on our awareness of the problem we face. But more than that it demonstrates that the deficit will only become smaller if we stick to the job.

What we do today and what we must do in the weeks ahead shows clearly that no matter how optimistic the economic projections might be, there is just no substitute for doing the sometimes painful things necessary to get the deficit down to size.

The Budget Committee is in the process of marking up a budget resolution. It is not easy work. But it is essential work. The deficit does not exactly seem to occupy the headlines right now. But it is certainly in the bloodstream of the economy. It is not in remission. It is just as much a theat now as it has ever been.

So I hope passage of reconciliation will serve—not only to cut the deficit—but also serve to remind us that there is still much work to be done.

Passing the bill completes our work on the 1986 budget and helps us on our way to the 1987 budget.

I note for the Members that to meet the Gramm-Rudman-Hollings deficit targets and to get on track to a balanced budget, we are going to have to reduce the deficit by $40 billion for the year 1987, and we are going to have to reduce it by at least $170 billion over the next 3 years.

Mr. CHAFEE. Mr. President, the Consolidated Omnibus Budget Reconciliation Act before us represents a great deal of hard work and careful

discussion. The proposal will save the Federal Government $18 billion over the next 3 years. This Reconciliation Act is the crowning element of the deficit reduction effort begun here 1 year ago.

Reconciliation represents the budget process at its best. It links the efforts of each of the authorizing committees in carefully achieving savings in the programs under their jurisdiction. It represents our opportunity to set priorities in the budget process.

While it is imperative for us to meet the Gramm-Rudman-Hollings deficit reduction targets, I believe it is equally imperative for us to avoid triggering the across-the-board reductions which will occur if we fail. Such indiscriminate cuts would fall on nearly every activity, whether wasteful or worthwhile. That outcome would be disastrous for many important and effective programs. We must continue to do everything possible to protect programs that invest in people.

The passage of this bill will yield savings that apply not only to this fiscal year but also to fiscal years 1987 and 1988. These long-term savings will make it easier for Congress to reach the deficit reduction targets set forth in the Gramm-Rudman-Hollings balanced budget law.

Mr. President, I do not agree with all of the provisions in the package before us today; however, I believe it is the best we can do at this point.

The reconciliation package before us today contains a number of important provisions which will make reforms in programs under the jurisdiction of the Finance Committee. I would like to take a moment to outline some of these changes for my colleagues.

BLACK LUNG

I am particularly concerned about the provision in the Consolidated Omnibus Reconciliation Act which makes changes in the funding of the Black Lung Program. This act will increase the excise tax imposed on domestically mined coal and dedicate those additional revenues to the black lung disability trust fund. In addition, the act will provide a one-time, 5-year forgiveness of the current interest payments of the debt incurred by the trust fund as a result of its unlimited authorization to borrow from general revenues.

Mr. President, these changes were made without the slightest review of the benefit structure and eligibility requirements. By continuing to increase the funding of the trust fund and waiving the interest payments on the debt of the trust fund, we effectively removed any incentive to tighten up on the eligibility requirements and the benefit structure of the program. This is simply bad policy.

At a time when we can barely retain adequate funding for critical programs like Child Nutrition, School Lunch, Head Start, Education for the Handicapped, Health Care for the Poor and the Elderly, Job Training, and Basic Education, this is deeply troubling. Where are our priorities?

We have tightened up on spending problems—indeed the package is before us for that very purpose—how did this program escape?

I do not intend to oppose the entire Reconciliation Act because of this proposal; however, I do want to register my deep concern about our priorities with my colleagues.

MEDICARE

Mr. President, the next program I'd like to discuss is the Medicare Program. The package includes many changes in the Medicare Program. Most of them are reasonable changes. Some, however, I believe may come back to haunt us.

Very few changes were made which will have a direct economic impact on beneficiaries of the Medicare Program. Most of the savings were due to freezes or other restrictions placed on the providers of health care services—such as hospitals and physicians.

I am concerned that if we continue down this path, we will have a health care program in which there are many beneficiaries needing health care services, but few professionals available to deliver those services.

This package cuts the increase in payments to hospitals to one half of 1 percent. In addition it substantially reduces—by close to 50 percent—the amount of reimbursement for indirect education costs to hospitals. I will be watching the effect of these combined reductions carefully to determine whether hospitals are capable of absorbing them.

We also continued a freeze on physician payments, with the exception of a 1-percent increase to what are known as "participating physicians"—those who have agreed to accept assignment for 100 percent of their Medicare patients. I know that there is grave concern among the physicians in my State about the freeze especially because of incredible increases in malpractice premiums during the past year.

It is becoming harder and harder to offer quality health care and at the same time substantially reduce reimbursement to those who provide that health care. This is just the beginning of the problems we will encounter in the coming years.

I predict that this body will soon be spending more and more of its time debating health care issues. The problems are just beginning to surface and they are complex and troubling. There simply are no easy answers.

This year, next year, and the year after that, when the time comes to produce budget savings, we are going to be faced with some very difficult problems—a growing elderly population which is living longer, increasingly limited long-term care services for that population, and rebellion among health care providers who cannot continue to absorb the loss resulting from our actions to freeze or reduce reimbursement.

So, Mr. President, while I am satisfied generally with our recommendations in this package, I am also worried about the future. I believe these problems can be resolved, but only if all of us work together with a common goal in mind—quality health care at a reasonable price. It sounds simple, but those of us who are familiar with the problems know that it will not be easy to achieve this goal.

MEDICAID

Mr. President, the changes in the Medicaid Program in this package are much more encouraging. For several years now, I have been working to reform this program. Specifically, I have been working to change the program to allow Medicaid funds to be used for community-based, long-term care services to our citizens with mental retardation and developmental disabilities.

In the long run, I believe this system is in need of a major overhaul. The current system is biased toward the use of institutional facilities—we should be working harder to keep handicapped citizens in the community and helping them to achieve their potential as productive members of their communities.

True Medicaid reform, such as what I have proposed in my legislation, S. 873—the Community and Family Living Amendments of 1985—may take years to accomplish. In the meantime, there are several interim reforms that can be made. Some of these reforms are included in the package before us today and I would like to briefly outline them for my colleagues.

LIFE SAFETY CODE

Earlier this year, I received complaints about the application of an outdated life safety code by the Department of Health and Human Services from parents and residential providers across the country. Consequently, in the legislation before us there is a provision to require the Secretary of HHS to accept the 1985 life safety code as an acceptable standard for fire safety. This code, while still striving for fire safety, offers greater flexibility in the use of resources within a residence to promote such safety. As a result of this action the Secretary of HHS has already acted to accept the new code.

PUBLICATION OF ICF/MR REGULATIONS

People concerned about intermediate care facilities for the mentally retarded [ICF/MR], have been waiting for 2 years to see new regulations for these facilities. In the reconciliation package, we have included a provision to require the Secretary to publish for comment the current draft of the new ICF regulations within 60 days of passage. These regulations have been more than 2 years in the making, and their publication is long overdue. As a result of this provision the Secretary of HHS has already published the new regulations for public comment. With

this provision, I hope we can move on to a new era of planning based on these new regulations.

MEDICAID WAIVER—DENIALS AND RENEWALS

Since 1981, HHS has offered home and community based care waivers to allow Medicaid moneys to be spent in specific non-Medicaid facilities. This program, called the Medicaid Waiver Program, has allowed many severely handicapped persons to live in the community rather than in institutions. This Waiver Program has also been used to develop better in-home support for elderly individuals so that they do not have to enter a nursing home until it is necessary.

However, the process of applying for and receiving a waiver has been so unpredictable, that it discourages many States from attempting to use the Waiver Program. In an effort to build greater permanence and predictability into the Waiver Program, I fought for the inclusion of two related provisions: First, a provision that calls for a moratorium on all denials of waiver renewal requests from States, and second, a provision that requires the Secretary to renew those waiver requests it approves for additional 5-year periods rather than the current 3-year periods.

ICF/MR PLANS OF CORRECTION

In recent years, many States have been confronted with the need to renovate old institutions for the developmentally disabled while at the same time trying to develop community based alternatives for those individuals. In many States, this choice between institutions and the community based services has presented a financial hardship. It has forced many States to renovate buildings that they had intended to close.

One of the provisions included in reconciliation would alleviate this problem—in very limited situations. This provision would allow an institution with a building or wing that is out of compliance to submit a plan of correction that incorporates depopulation of the building or wing over a 3-year period. Among a variety of other limitations, this would be allowed only in situations where the violations are nonlife threatening, and only with the approval of the Secretary.

I do not believe that this option will be used in many situations. The intent here is simply to allow those States which have had successful experiences with community based services the option of expanding on that success. There are many States which simply would not ask for this option, and if they did ask would be denied because they do not have a positive history of community based services and to some extent deinstitutionalization.

Some people are concerned about this provision because they think that States are given too much power. This is not so. The State must request to implement this provision, but the Secretary of HHS must approve the request.

Some are also concerned that this provision will allow States to dump people out of institutions without providing appropriate services and programs. I would never introduce such a provision. As it is framed there are a wide variety of requirements and limitations on the use of this provision. For those individuals who are affected, there are numerous safeguards and requirements which must be met throughout the operation of the plan.

There are many other provisions dealing with the Medicaid Program in this package. Those outlined above are simply the highlights. All in all, I believe that these provisions represent a substantial step forward in the attempt to provide a reasonable and rational method of providing long-term care services to both the physically and mentally disabled and the elderly.

Mr. ROTH. Mr. President, the negotiation of this budget reconciliation legislation both within the Congress and between the Congress and the administration has been a difficult, and at times, trying process.

This unprecedented ping pong game between the two bodies has eroded whatever confidence we had with the voters that we can cut spending and lower the deficit. On top of that, somewhere through the passage of time, with reestimates and other factors, 78 percent of the 3-year savings of this bill have evaporated. Once estimated to lower spending by $80 billion by 1988, this conference report now provides only $18 billion.

Clearly, it's time to complete this work and move on to other tasks. That means compromise. I am pleased to say that the Senate and the House have agreed on compromise language on trade adjustment assistance that we believe will be acceptable to the administration.

Despite the record high trade deficit, the administration has refused to support trade adjustment assistance, the program that helps workers who lose their jobs to imports. The President's fiscal year 1987 budget proposal again calls for the elimination of the program.

The Congress knows full well that at no time in our history has the need been greater to help those hurt by trade. That is why the support for my full proposal to extend and reform trade adjustment assistance that was incorporated in this budget reconciliation legislation has met with such overwhelming support among Members in both Houses and on both sides of the aisle.

In short, the administration has sought to wipe out the program and I have fought to extend and reform it. My proposal, which was reported unanimously by the Finance Committee, passed by the Senate and accepted by the House, would have extended the current program for 6 years and enacted three key reforms: Future funding through a new small import fee, a new requirement that workers be enrolled in training to receive cash benefits and a new benefit, up to $4,000 for each worker, paid directly or through a job training voucher, to pay for the required training.

In this compromise, I have agreed to drop my major reform proposals in order to save the Trade Adjustment Assistance Program, to begin to change the program into a real adjustment program and to enact a number of more minor improvements.

I believe that the administration will accept this compromise.

This compromise would accomplish several things:

First, the TAA Program would be saved and extended for 6 years;

Second, it would assure that workers who lose their jobs due to imports will continue to be eligible for cash benefits, the so-called trade readjustment allowance [TRA];

Third, it restores the cash benefits to workers who were cut off on December 19;

Fourth, it begins to turn the program into a real adjustment program by providing for participation of workers in job search programs and, in general, linking the receipt of cash benefits to participation in a job search program and by encouraging training under the TAA Program by requiring the approval of training by State agencies and by making clear that the full breath of training possibilities from basic skills education to on-the-job training can be funded under the TAA Program;

Fifth, it assures that workers applying for TAA in any State in the country will get counseling on job search and training opportunities;

Sixth, it will continue technical assistance to firms to help firms become more competitive. During this period in which the administration has been dismantling the firms program, I have received many, many letters from firms testifying to the usefulness of the technical assistance;

And finally, the compromise clarifies the application of the TAA Program to workers in agricultural firms.

Enactment of these changes clearly would be a victory.

At the same time, I must say that I am greatly disappointed that this final version of the omnibus budget reconciliation bill does not contain the major reforms to the program I have been pressing.

The crux of the issue was the proposal for the negotiation of an import fee to pay for the program.

I continue to find the administration's position on this fee to be inconsistent. An import fee by another name could be a user fee, and that's exactly what the administration called for in last year's budget proposal, and again in the fiscal year 1987 budget proposal—new customs users fees on all imports, dutiable and nondutiable. I might add that at the time the administration proposed these across-

the-board import fees, it sent a document to the Finance Committee indicating that administrative costs for implementing the fees would be minimal—$130,000.

The import fee I am proposing would be a small cost for trading nations to pay to keep trade open and expanding. The imposition of such a fee is not without precedent, Hong Kong, the freest of free-trade nations, uses a small fee to help finance trade promotion. The fee I am proposing would be so small, that like Hong Kong's fee, it would not affect the volume of trade.

A trade policy that calls for growing trade among nations while ignoring the need to help workers adjust to import competition, will not succeed. The strong bipartisan support in Congress for strengthening trade adjustment assistance repeatedly shows that we in the trenches of the trade debate understand this basic point. It is time for the administration to join in this constructive effort by the Congress instead of fighting it.

I continue to believe that the major reforms of TAA are critical to establishing an effective adjustment program for workers who lose their jobs to trade. Retraining is increasingly important and it will cost money. The import fee is the most reasonable method of funding. I will continue to press for these reforms. In the meanwhile, I take some satisfaction in the fact that we may at least save the basic program with a few improvements.

Let me say that I greatly appreciate all the support I have received from other Members of Congress for this effort to retain and strengthen trade adjustment assistance. It is often said these days that there is no longer bipartisanship on trade policy in this country. This is certainly not true so far as trade adjustment assistance is concerned.

In particular, I am grateful to Senator MOYNIHAN, the chief cosponsor of the full extension and reform proposal, for his diligent efforts and that of his staff and to my colleagues on the Finance Committee, on both sides of the aisle, who have supported and followed developments on this legislation closely.

As the trade debate proceeds this year, I expect we will have other opportunities to continue our efforts to establish an effective Trade Adjustment Assistance Program.

Finally, I want to call attention to section 13009(d) of the bill relating to the impact of Gramm-Rudman on payments of trade adjustment assistance allowances [TRA] when the bill is implemented. This provision would limit the impact of Gramm-Rudman to weeks of unemployment beginning March 1, 1986, and not for weeks for which individuals were eligible but have not been paid. In no circumstances would the application of Gramm-Rudman cuts apply to benefits for weeks prior to March 1.

THE PROVISION MANDATING STATE COVERAGE OF UNEMPLOYED PARENTS UNDER AID TO FAMILIES WITH DEPENDENT CHILDREN

Mr. WALLOP. Mr. President, I rise in support of the latest version of the Senate amendments to last year's budget reconciliation legislation. We are in an interesting parliamentary situation at this juncture in the reconciliation debate. Normally, our rules do not allow amendments beyond the second degree. However, with this package of amendments, we will be amending the package in the fourth degree.

We are doing this because the current position by the House of Representatives on reconciliation is unacceptable—both to the Senate and the White House. There are many parts to this package which I do not like, but I have voted for the bill. We have to deal with the deficit, and the budget savings in this legislation is crucial to balancing the budget by 1991.

The bill is a net savings. But, the House has loaded the package with a number of costly and inappropriate items. If we could delete some, the budget savings would increase. I am particularly upset about the requirement that the States would be mandated to offer AFDC to families with an unemployed parent. We are not only increasing welfare costs to the Federal Government, but to the States, which are required to match this AFDC payments.

This provision is objectionable for three reasons. First, it is not a reduction in the Federal budget, but an increased cost. This provision will increase the Federal deficit by $175 million the first year it is effective. The second objection is the cost to the States resulting from this amendment. A rough estimate is that the States would have additional costs of $140 million in the first year.

The last objection is the Federal mandate that the States must provide this welfare benefit; 26 States do not provide this auxiliary welfare benefit. I would ask unanimous consent that a list of these States appear at the end of my statement. It is these States that would bear the $140 million cost of this program. In my State of Wyoming, the legislature's budget session is coming to a close. Because of the fall in oil prices and the disappearance of the uranium industry, my State is in a severe recession.

The State budget cuts back spending across the board. Wyoming is acting in a responsible fashion to live within its means. This is a far cry from what has been happening here in Washington. But, now the U.S. House of Representatives is forcing a budget busting program on Wyoming. This is ludicrous. This is part of the agenda of the social welfare activists to federalize welfare. The next step will be to mandate welfare benefit levels by the Federal Government. This is a State right, but the activists want the Feds to call the shots. We have to stop this backdoor approach to federalizing welfare right now, and I therefore strongly support the elimination of the AFDC-UP provision from the reconciliation bill.

The following is a list of States that don't have the AFDC-UP Program:

Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisana, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming, Virgin Islands, and Puerto Rico.

HOSPICE CARE

Mr. ROTH. Mr. President, I am very pleased that this 1986 Budget Act contains a provision which I introduced to expand the Medicaid Program to cover hospice care as an optional service to be offered by the States to those patients dependent upon Medicaid for their health care needs. In addition, this legislation makes hospice care under Medicare permanent, as well as increasing the rate of reimbursement. As you may recall, hospice care under Medicare was originally passed as a 3-year demonstration.

This legislation is important for many reasons. Hospice care saves the Medicare Program money, and now it can save the Medicaid Program money too. Preliminary results of the national demonstration project conducted by the Health Care Financing Administration document convincingly that hospice is a cost-effective alternative to the ever-growing cost of multiple hospitals stays the terminally ill must cope with to be eligible for Medicare coverage. Moreover, the Congressional Budget Office estimates that providing reimbursment for hospice care will save Medicare alone over $100 million during the first 3 years. Savings can only increase as the hospice benefit becomes more accessible.

I believe hospice care should be as widely available as possible. In Delaware, our once small hospice program was expanded to provide statewide coverage. This expansion was in part due to the commitment of Congress toward this compassionate form of care. Many people have confirmed my belief that hospice is a sensitive and preferable alternative to lengthy and repeated hospital stays. Patients can spend important time at home with their loved ones. Families can participate in the program of care. Hospice care alleviates pain and suffering. It provides an atmosphere of concern and comfort, instead of the antiseptic and mechanical atmosphere of a hospital. I commend my colleagues for recognizing that the time has come to bring hospice under the Medicaid plan, to offer this humanitarian service to the low-income as well as older patients.

TRADE ADJUSTMENT ASSISTANCE

Mr. MITCHELL. Mr. President, I am pleased that the Senate is now considering the Budget Reconciliation Act. This measure includes reauthorization

of Trade Adjustment Assistance, a program that is very important to Maine.

Because Congress failed to conclude action on last year's budget reconciliation measure, reauthorization of this program was not enacted. Authority for benefit payments have been issued since last year.

In Maine alone, 450 dislocated workers, people who have lost their jobs because of import competition, have received no benefits—no income—since December 20. Those of them who are now in training programs have stayed in training, in the hope that this Congress will act promptly to restore those benefits this year.

If Congress fails to act, these people will be forced to drop out of training, to seek alternative work if other jobs are available. Some of them will be forced to apply for public assistance. All of them have already suffered severe financial loss and the personal turmoil that is involved with job loss.

They are all dislocated workers whose problems are the direct result of conscious policy choices made by this administration in the area of trade.

Our trade imbalance imposes an unfair and crushing burden on those industries and workers whose products are targeted by foreign competition.

Although the long-range answer to their problem will require a dramatic change in the operation of our Nation's trade policy and improved investment and competitiveness on the part of every manufacturing sector, the immediate short-term problem must be addressed.

That short-term problem is very serious for the thousands of workers who have seen long-established shoe manufacturing plants closed with no hope of their reopening. It is serious for textile workers who have seen their intensive efforts to modernize overtaken by the combined effects of an overvalued dollar and foreign Government subsidies to their overseas competitors.

The problems facing these manufacturers and workers are not of their own making. They are problems which have a variety of causes, including conscious Government policy choices. The policy of this administration, to favor imports as a way of restraining domestic inflation, has kept some prices lower for all at great personal cost to a few.

The Trade Adjustment Assistance Program is a small effort on the part of Government to redress the unfairness with which trade deficits affect different parts of the country. The program provides direct income help for those with no other income source; it creates the conditions that allow some to seek training for a new job field.

The Trade Adjustment Assistance Program is not the only answer to the changing makeup of our manufacturing sector. It is not a sufficient answer. But at the present moment, it is the only program in place which has the capacity to provide some level of assistance to those most directly and most drastically affected by our trade deficit.

Trade adjustment assistance can never take the place of an improved and aggressive U.S. trade policy. It cannot take the place of an improved international monetary policy to moderate wild imbalances in international currency rates.

But so long as governments insist on manipulating their export industries for competitive advantage, some form of trade adjustment aid will be necessary.

SECTION 19 OF OCS LANDS ACT

Mrs. HAWKINS. Mr. President, I strongly support this amendment. It is crucial to the State of Florida. This amendment would restore the compromise language worked out last December which is contained in the House reconciliation bill providing for State-Federal consultation in leasing Outer Continental Shelf lands.

Section 19 of the Outer Continental Shelf Lands Act requires the Secretary of the Interior to strike a balance between the national interest and the well-being of citizens of the affected State. In determining the national interest, the Secretary must equally weigh the need for energy development and the need to protect other resources and uses of the coastal zone such as the marine environment. If the Secretary determines that the recommendations put forth by a State are not reasonable, a detailed explanation of that determination would be required.

Even as we consider the need to take the individual interests of States into account, the Department of the Interior is considering opening up for reevaluation some very delicate offshore tracts for potential leasing as part of its 5-year leasing plan. These same tracts have been off limits to leasing in the past due to their delicate and unique makeup.

In the State of Florida, the sensitive coastal habitat and esturaries, tropical waters, and white beaches demand extra special care. Simply allowing offshore areas to be leased for national energy and economic development purposes overlooks the economic and environmental needs of an individual State. Florida's unique coastal resources could not withstand an oil spill. Its tourist industry would suffer a harsh blow.

In sum, Mr. President, I believe that the State-Federal language is absolutely vital and I urge my colleagues to support this amendment.

STATEMENT OF MANAGERS—NCR USER FEES

Mr. SIMPSON. Mr. President, I should like to make one brief clarifying remark about the provision contained in this bill regarding assessment of user fees by the Nuclear Regulatory Commission. Due to an oversight in the preparation of the conference report on this legislation late in the last session, the statement of managers explaining the legislative intent of this particular provision was inadvertently omitted from the conference report. Because of that oversight, Mr. President, I ask unanimous consent that a copy of the legislative history, entitled "Statement of Managers Re NRC Fees," be printed in the RECORD at this point, for the purpose of guiding the NRC in its implementation of this provision.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF MANAGERS RE NRC FEES

The House Budget Reconciliation legislation directs the Nuclear Regulatory Commission to collect user fees and charges that, when added to other amounts collected by the Commission, total one-half of its budget. Under the Independent Offices Appropriation Act of 1952 (31 U.S.C. Sec. 9701), the Commission currently assesses fees which are expected to total $60 million in FY 1986. The House provision adds additional authority, which is expected to result in more than $150 million per year in additional revenues, assuming the current level of NRC expenditures. Discretion is left to the NRC to establish the details of the charges in the rulemaking. However, under the House provision, the Commission must consider the costs of regulating various classes of licensees. The Senate Reconciliation legislation contained no such provision.

The conferees agreed to require the NRC to assess and collect annual charges from its licensees in an amount that, when added to other amounts collected by the Commission, shall not exceed 33 percent of the Commission's budget for each fiscal year. Assuming the current level of NRC expenditures, this is expected to result in the collection of additional fees in an amount up to approximately $80 million per year for each fiscal year. The charges assessed pursuant to this authority shall be reasonably related to the regulatory service provided by the Commission, and fairly reflect the cost to the Commission of providing such service. This is intended by the conferees to establish a standard separate and distinct from the Commission's existing authority under the Independent Offices Appropriation Act of 1952 in order to permit the Commission to more fully recover the costs associated with regulating various categories of Commission licensees. This authority is not intended, however, to authorize the Commission to recover any costs that are not reasonably related to the regulatory service provided by the Commission, nor is it intended to authorize the Commission to recover any costs beyond those that, in the judgment of the Commission, fairly reflect the cost to the Commission of providing a regulatory service.

The Commission may assess and collect annual charges from its licensees only after the expiration of 45 calendar days, as calculated in accordance with this provision, following receipt by the Congress of a report by the Commission regarding its authority to collect annual charges prior to the enactment of this provision, including the authority provided pursuant to the Independent Offices Appropriation Act of 1952. This report must be completed by the Commission and submitted to the Congress within 90 days after the enactment of this Act. In addition, the Commission must promulgate rules, after notice and opportunity for

public comment, establishing the amount of the charges to be assessed pursuant to this authority, before any such charges may be assessed. It is the intention of the conferees that, because certain Commission licensees, such as universities, hospitals, research and medical institutions, and uranium producers have limited ability to pass through the costs of these charges to the ultimate consumer, the Commission should take this factor into account in determining whether to modify the Commission's current fee schedule for such licensees.

Mr. DOMENICI. Mr. President, this was indeed an oversight in the last session, and the statement inserted in the RECORD accurately reflects the agreement of the conferees on the meaning and scope of this particular provision.

Mr. CHILES. I, too, concur in that statement, Mr. President.

Mr. SIMPSON. I thank my colleagues for that additional explanation.

Mr. DOLE. Mr. President, when we adjourned the last session of Congress in December, we left behind us an important piece of unfinished business—billions of dollars in savings in the budget reconciliation bill.

Since that time Senators, staff, and representatives from the administration have met in dozens of meetings in an effort to salvage the deficit reductions in this measure. And today, we have finally reached agreement on a 3-year $26 billion package that addresses both the concerns of the administration and the Senate. I am pleased to say that the administration has assured me, that if this bill is sent to the White House the President will sign it.

The Senate package differs from the last House offer in four areas—the OCS provisions were revised; one Medicare provision was modified, as was an expansion of the AFDC Program; and we deleted the cap provision for Federal employee health benefits.

Gone from the original package are the add ons, the expansions of programs that would have transformed reconciliation from a savings measure into a spending one. The excise tax to support the Trade Adjustment Assistance Program has been eliminated. And like the House, we have dropped the Superfund provisions.

These changes will not fully satisfy everyone. But we can not relent in our effort to cut the deficit. And this package contains some fundamental reforms in spending programs—reforms that will continue to save the Federal Government money for years to come. Even today, $26 billion—$19 billion in outlay reductions and $6 billion in revenue increases—is nothing to be scoffed at.

Mr. President, there is some urgency in approving this bill now. On March 15 the cigarette tax will expire. This provision involves considerable revenue for the Federal Government. So I hope we can act favorably and quickly.

Many Members have put a great deal of time and effort into this package. Senator DOMENICI, Senator MCCLURE, Senator PACKWOOD, Senator ROTH, Senator HELMS, and others.

I am hopeful that the House will accept our offer. It is a reasonable compromise, one that deserves its serious consideration, and as I said earlier, one the administration has indicated it finds acceptable.

Mr. President, I urge that the Senate accept this compromise and send it to the House.

Mr. NICKLES. Mr. President, today the Senate takes final action, I hope, on the reconciliation measure. Title IX of the bill is a package of amendments to ERISA title IV designed to shore up the single-employer plan termination insurance provisions. As of today this Government backed program is approximately $1.4 billion in the red—due in large part to a handful of recent distress terminations of plans by plan sponsors in or near bankruptcy. The changes made by these amendments are designed to minimize the Pension Benefit Guaranty Corporation's exposure to these type of terminations for those terminations approved by PBGC after January 1, 1986.

In addition to these ERISA changes, the leadership intends to put through a concurrent resolution with a series of technical amendments that are required due to the passage of time since the last effort to pass the conference report in December 1985.

The members of an American Bar Association task force considering ERISA title IV issues have expressed concern that companies may take actions to impel involuntary termination of a plan by the PBGC and thereby limit the liability to plan participants and the PBGC. I expect that the Corporation will block this and other abuses of the new termination rules under title IV by using its authority under section 4047 to negate pending or completed plan terminations and restore plans to their pretermination status. Specifically, the Corporation may negate terminations under section 4041(c) or section 4042 whenever the Corporation determines that a principal purpose of an act, failure to act or transaction undertaken by the contributing sponsor—or any member of its controlled group—was to enable such person to satisfy any of the distress criteria in section 4041(c)(2)(B) or to compel the Corporation to institute termination proceedings under section 4042, thereby decreasing the liability to the PBGC or avoiding the obligation to provide all benefit commitments under the plan.

Mr. JOHNSTON. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair informs the Senator from Louisiana that until all time has expired or been yielded back, further amendments are not in order.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I yield as much time to the distinguished Senator from Idaho as we have on the amendment.

Mr. MCCLURE. Mr. President, I take this time only to make a very brief explanation of what we tried to do and what is embodied in the amendment with respect to several OCS issues. And the one that has been highlighted has been the 8(g) issue, the question of the distribution of the proceeds of the money accrued from oil operations in the so-called 8(g) zone. I will not take much time to explain that in detail, but I would be pleased to answer questions, if indeed there are questions, in that regard.

But we have sought to keep faith with the position that was taken in the Energy Committee and again on the floor of the Senate in supporting the actions brought to our attention, primarily from the Senator from Louisiana, BENNETT JOHNSTON, the distinguished and very helpful ranking member of that committee.

There are three other issues that were involved. One was the buy American provision; the second, the section 19, which deals with the State process and involvement in OCS deliberations and decisions; and, the third, onshore revenue sharing of Outer Continental Shelf revenues, a block grant to the States affected.

I made the judgment, in the various discussions we had with OMB, that there were tradeoffs between each of those provisions, all of which had opposition from the administration. And the best way to address them was to dispose of the 8(g) issue for once and for all and do that in the way that kept faith with the coastal States that are involved and with the position we have taken in the past and to drop the other three provisions. That is what is done in this proposal before us at this time.

To do otherwise would have automatically increased the pressure on the distribution of funds in the 8(g) zone. And I still believe that provision was correct. I think we have been able to, by doing this, give to the people in the 8(g) States the most favorable, most generous, and in my judgment, the most proper distribution of those funds that was possible to get by agreement from the administration, and to leave those other three issues for another time and another place. Because to leave them in here and attempt to resolve them in this particular bill would have inevitably resulted in a reduction in the amount of money that would have been otherwise avail-

able for distribution out of the 8(g) zone.

Mr. JOHNSTON. Will the Senator yield?

Mr. McCLURE. I am happy to yield to the Senator from Louisiana.

Mr. JOHNSTON. I thank the distinguished Senator.

Is the President of the United States committed to this formula now contained in this amendment on 8(g)?

Mr. McCLURE. I think the best way I can answer that is that we have negotiated on the several OCS questions and the President has stated, I believe to Congressman HENSON MOORE yesterday at a meeting at the White House, that indeed this formula is acceptable to him in the context of this bill. I know that the Senator would like me to be able to say—and I wish I could say—that this, standing free and clear, would be acceptable to the administration. I think it should be. I believe it will be. But I hope we can resolve it in the context of this bill. I am assured that, indeed, if this bill is sent to the President with no changes in the overall bill, the President will sign it.

Mr. JOHNSTON. But the President is committed to sign the bill as is, if given to him without changes?

Mr. McCLURE. Yes.

Mr. JOHNSTON. What is the Senator's understanding about if this whole thing goes down? Of course, that is my great concern, because I have been told by the House and by contacts in the House that, if this comes back in its present form, they will not accept it and they will send us back the same bill which they gave us before. I hope that is not so. You know, there is a lot of puffery and threats that Presidents make in terms of vetoes, that OMB Directors make in terms of what they will advise about vetoes, and about what the staff members say that their principals are going to do on the House side. But if that happens and this whole thing falls apart, you do not know what the attitude of the administration will be?

Mr. McCLURE. After being involved in negotiations with OMB for the last 2 or 3 weeks, hour upon hour of negotiations, of which this is only a part, the best I can say is that there is every indication, if there is any change in the legislation that has been presented by the chairman of the Budget Committee, that the likelihood is that the President would be advised by OMB to veto the legislation.

Now I know our friends on the other side of the Capitol resent us passing something to them on a take-it-or-leave-it basis. But this thing has been bouncing back and forth across the rotunda often enough that I really do fear—and I am sincere when I say this—I really do fear if there is any change at all, and certainly if there is substantial change, it is likely to unravel and we will end up with no bill at all.

Mr. JOHNSTON. I understand. My question really had to do with that no-bill-at-all contingency and what we might expect if this whole thing does become unraveled, as I fear it will. Do we simply start out with this bill as the new offer on which we will take further erosion and further heat by OMB and by the administration, because that has been the consistent history throughout this bill.

Mr. McCLURE. I think the Senator's fears are well founded. I just hope we never get to that point so we will never have to find out.

I really do believe that we are at the point on this bill—and certainly I will leave it to the distinguished Senator from New Mexico and our leader, the Senator from Kansas, to make any further or different statements—but from my own perspective, having dealt with only the OCS issues in this bill, I think what we have is a fragile and tenuous compromise with the administration on the several issues that are involved and they are prepared to accept it if we do not change it. But that is very fragile, very tenuous, very hard fought for, and very hard to achieve. And I cannot say that I know if even one word is changed that the administration would back away from the agreement, but I say that I have a substantial fear and I think the fear is well founded.

Mr. JOHNSTON. I thank the Senator for his answer.

Mr. DOMENICI. Mr. President, I heard the last exchange between the distinguished Senator from Louisiana and the distinguished Senator from Idaho. Let me say to my friend from Idaho that I have the communication here from the White House. I would be glad to tell the Senator from Louisiana precisely where the administration is by just reading a very short statement that they submitted to me today.

> The bill now being considered by the Senate reflects negotiations between congressional leaders and administration officials. In it present form, the Senate bill is acceptable. However, if there are any changes which upset this delicately crafted compromise, the President's senior advisers would recommend disapproval.

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

Who yields time?

Mr. JOHNSTON. Mr. President, this whole 8(g) matter is rather a tragic comedy. It is tragic in that the State of Louisiana for one is hurting very badly in terms of its economy. At last count we had 12.2-percent unemployment, and that is rapidly rising. There is real despair in Louisiana as the oil and gas industry has contracted, and is virtually shutting down, shutting up, and moving off. The agricultural industry is in very terrible shape as it is in other States. Tourism is down, as well as the port of New Orleans. We are in very bad shape.

So when we talk about $100 million, or $200 million for Louisiana, it is absolutely vital. So there are elements of tragedy in this whole thing. Throughout this whole consistent fight for the 8(g) funds, the administration has consistently opposed Louisiana, at each and every step of the way.

Mr. President, we now have a so-called compromise. It represents significantly less than that which this Senate passed. Indeed, three committees in the House of Representatives, Merchant Marine and Fisheries, Interior Committee, later the Rules Committee, later the full House, later in the Senate the Senate Energy and Natural Resources Committee, and the full Senate passed legislation which was billions of dollars more according to Secretary Hodel than this compromise. Indeed, according to Secretary Hodel, the legislation which passed each of those bodies, and indeed passed the conference committee, for Louisiana represented $4 billion to $6 billion, and on pre-1978 leases which were part of the settlement it represented an additional $2.3 billion to $3 billion.

Mr. President, I ask unanimous consent that Secretary Hodel's letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF THE INTERIOR,
Washington, DC, December 10, 1985.

Hon. J. BENNETT JOHNSTON,
Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: As a Conferee on the provisions of the Budget Reconciliation bills relating to the Outer Continental Shelf (OCS), you should be aware of the Administration's position with respect to various provisions that are subject to this Conference. I have enclosed a description of the differing OCS-related provisions in the House and Senate bills and the Administration's position on each. I am most concerned about the "Miller Amendment," which amends section 19 of the OCS Lands Act, undercuts the delicate balance between State and Federal interests and creates, in effect, a possible State veto of this important national program. Enclosed for your consideration is a copy of my September 20, 1985, letter to the Chairman of the Senate Energy and Natural Resources Committee discussing in detail the many serious problems inherent in this provision.

I also call to your attention the reconciliation provisions entitled the "Ocean and Coastal Resources Management and Development Block Grant Act," better known as OCS revenue sharing. The Administration strongly opposes these provisions. In light of over $8 billion in OCS revenues that would be obligated under other provisions of this legislation, these revenue sharing provisions are particularly unjustified. they provide OCS revenues to States unaffected by OCS leasing, and they earmark these revnues for activities for which the Administration has sought to reduce or eliminate Federal funding.

Finally, I again reiterate the Administration's objections to the windfall created by the 8(g) provisions of the Budget Reconciliation bills. Ironically, when Congress enacted section 8(g) in 1978, the cost of the distribution was thought to be so insignificant that the Congressional Budget Office did not even include it in its cost estimate.

However, the reconciliation provisions that require that 27 percent of 8(g) royalties be distributed to the States could cost between $4-6 billion over the Administration-supported settlement. Moreover, the State of Louisiana's claim that this legislation requires the sharing of revenues from leases issued prior to 1978, as well as after 1978, a sharing not required under current law, would add an additional $2.3 to $3 billion to that estimate. Thus, the total cost of the 8(g) provisions could reach $8.4 to $11.1 billion. I therefore ask that, in addition to the other issues raised herein, you give careful consideration to the 8(g) provisions in the course of this Conference.

Sincerely,

DONALD PAUL HODEL.

Mr. JOHNSTON. Frankly, Mr. President, I never believed those figures and told my colleagues here on the floor I thought they were grossly inflated, and intentionally inflated for the purpose of trying to beat our legislation. It is true, however, Mr. President, that the bill as passed by the House and Senate in the conference committee did contain probably more than $1 billion more than the present settlement.

Mr. President, after we had passed the bill, after it has gone to conference committee, after we came back here on the floor, and in that abortive last day in December when the conference committee report was we though killed—at least it was sent back to the conference committee. Then when we came back after that last abortive day, Mr. President, we again had discussions about trying to put back together the reconciliation bill. Attempts to negotiate with OMB were unavailing. Calls were not returned from OMB.

Mr. President, this is that same OMB that professes to want to be bipartisan. Oh, they want the cooperation of Democratic Senators. Oh, they protest around the country that Democrats will not join in and be part of compromises, whether it is aid to the Contras, whether it is bipartisan budget reform, or whatever it is. But try to get a call through to OMB, Mr. President, and they will not return the call.

A member of the Budget Committee cannot get a call returned. So finally, we had Director Miller before the Appropriations Committee on January 19, and tried to discern what was the position of the administration on this 8(g) matter. I remonstrated, and my dear friend, the Senator from New Mexico, also on my behalf said we have been trying to find out what is the position of the administration. So, finally, he said, and I am quoting Mr. Miller now from the transcript:

Mr. MILLER. Basically, on 8(g), the components are this: The so-called Buy America program, while it has a nice ring to it, is going to cost enormous amounts.

Senator JOHNSTON. That is not part.

Mr. MILLER. We are against that. We are also against the States going back and taking pre-1978 money. We are also against the provision of the 8(g)-type provision connected with 8(g) that would strap the Secretary's hands and the discretion he has with respect to offshore leasing.

If we can reach an agreement, if you will accept those provisions, I think we can have an 8(g) settlement without very much trouble at all.

So at long last, Mr. President, we found out what the position of the administration was. Take out pre-1978 leases and we had a deal.

Mr. President, I ask unanimous consent that a transcript of the fiscal year 1987 budget overview hearings from Wednesday, February 19, 1986, on the Committee on Appropriations, pages 38, 39, and 40 be printed in the RECORD in full.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUDGET OVERVIEW HEARINGS—FEBRUARY 19, 1986, U.S. SENATE, COMMITTEE ON APPROPRIATIONS, WASHINGTON, DC

The Committee met at 1:42 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Mark O. Hatfield (chairman of the committee) presiding.

Present: Senators Hatfield, Weicker, McClure, Garn, Andrews, Abdnor, Kasten, D'Amato, Mattingly, Rudman, Specter, Domenici, Stennis, Chiles, Johnston, Burdick, Leahy, DeConcini, Bumpers, Lautenberg, and Harkin.

Chairman HATFIELD. The meeting will please come to order. This afternoon, we will begin the first of two overview hearings of the President's budget request for Fiscal Year 1987. This afternoon, we will hear from the Honorable William Miller, the Director of the Office of Management and Budget. One week from today, we will hear from Rudy Penner, the Director of the Congressional Budget Office, and he will present his annual analysis of the President's budget.

I believe this is your first appearance before this Committee, Mr. Miller, and we welcome you.

Mr. MILLER. Thank you.

* * * * *

Senator DOMENICI. Would the Senator yield for a clarification?

Senator JOHNSTON. Yes. Yes.

Senator DOMENICI. Mr. Miller, the Senator from Louisiana talks about the offshore leasing programs settlement, the so-called 8(g). Who do we settle with? Who do we talk with? He is the chief negotiator over here. Did somebody talk to him about a settlement?

Mr. MILLER. Yes, we have. We have had some discussions.

Senator JOHNSTON. I talked to your man over a month ago, and then said, "You know, here's my position. I would love to talk about it" and nobody has been there to talk to.

Mr. MILLER. We have indicated, Senator, very clearly, I think, our concerns over the 8(g) settlement. When we talked about——

Senator JOHNSTON. The concern is, you just don't want us to have it.

Mr. MILLER. No, we have agreed to certain amounts of monies.

Senator JOHNSTON. Not with me.

Mr. MILLER. Senator, I have sent up letter after letter after letter indicating what the Administration's position on 8(g) is. We have talked briefly. Secretary Hodel, I understand, has talked with you, Randy Davis has talked with your people.

Senator JOHNSTON. I talked to Randy Davis; I talked to Secretary Hodel. My opinion——

Mr. MILLER. I hope we can reach some kind of accommodation, but we are simply not going to allow a raid on the federal treasury in the nature of 8(g).

Senator JOHNSTON. What is your position? You say you have stated time and again what that position is. What is it? I mean, your budget says 4 percent.

Mr. MILLER. Basically, on 8(g), the components are this: The so-called Buy America program, while it has a nice ring to it, is going to cost enormous amounts.

Senator JOHNSTON. That is not part.

Mr. MILLER. We are against that. We are also against the states going back and taking pre-1978 money. We are also against the provision of the 8(g)-type provision connected with 8(g) that would strap the Secretary's hands and the discretion he has with respect to offshore leasing.

If we can reach an agreement, if you will accept those provisions, I think we can have an 8(g) settlement without very much trouble at all.

Senator JOHNSTON. The problem is not with me on those elements, but most of those are not in the 8(g). The Buy American, those other things are not in 8(g).

My time is up. Thank you.

Mr. JOHNSTON. Mr. President, there we were. We thought we had an offer stated by the highest official on budget matters in the whole administration.

So my colleagues in the House then went back to the drawing boards to send us an 8(g) piece of legislation precisely and exactly, and to the comma and period what the Director of OMB had said; that is, take out pre-1978 leases. That is what the House amendment did, Mr. President, as it came over here.

We thought there would be no difficulty in getting that which the Secretary had suggested, and we thought we had agreed to. But then, Mr. President, comes the comedy part of this whole little scenario. The administration sensed then that we were going to have an agreement on terms stated by the OMB but, oh, My Lord, it is going to go to the credit of Congressman JOHN BREAUX in the House of Representatives. And maybe even Senator JOHNSTON will get a little bit of the credit. Oh, we cannot have that, Mr. President. Oh, no. So we went through this elaborate new little dance.

What they did, Mr. President, is restructure the deal, move some of the terms around, reduce the amount, and then appear magically over at the White House, cameras whirring, and saying because of the intercession of Congressman HENSON MOORE we now have a deal which would otherwise was going to fall apart. I think that is somewhat humorous, Mr. President, first because it involves a lesser amount of money than the OMB Director said he was willing to accept, and second, and more difficult, because it might be setting the scene—I hope it is not—for the whole thing to fall apart.

My indication from the House, as I just indicated to the distinguished Senator from Idaho, is that the House is not going to accept this. They are not going to do that with my advice. My advice is let us go ahead, forget

the politics, blow off a little steam here on the floor, and let us get this approved. My State is hurting. But if it falls apart, Mr. President, it is not going to be my fault. And it is not going to be the fault of my colleagues in the House. It is going to be because, against my advice, this matter was put together in a way that we are advised the House will not take. Of course, you have to measure the risk on the one hand of sending the White House a bill which they say they will veto as opposed to sending the House a bill which they say they will not take.

Faced with those two alternatives, Mr. President, my advice is send the President the bill, and see if he will veto it. The reason I think that, first of all, I think that was huffing and puffing on the part of the administration. This bill saves, I am advised, about $17 or $18 billion over 3 years. Those are real savings. Those are not phony savings. Those are savings worked out over a period of months in the reconciliation process with a lot of bloodshed, and political bloodshed on both sides of this Capitol in making cuts in programs.

Mr. President, I do not think the President could afford to veto such a bill, especially could he not veto such a bill when his own OMB Director has come in and said that is what the administration wanted. How could the administration have vetoed on that account? They could not do it.

I do not think they could veto on account of section 19 because that section has been compromised as well as the Buy American compromise.

On buy America, all the administration has to do to avoid the buy America is to say that the drilling of the offshore well would not be feasible and you invoke the buy America. They can invoke that kind of certificate any day of the week right now.

Indeed, with buy America it is not feasible, given today's oil prices, to drill such a well.

So, Mr. President, my advice would be, faced with one of the two choices, either sending an unacceptable bill to the House or sending a bill to the President, I say send the bill to the President. If he does veto, you can try to override. In any event, you have a new reconciliation bill coming through next year to which this could be attached. In the meantime, the 8(g) money is in escrow and nobody gets their hands on it.

Mr. President, the advice was to put this deal together. It is considerably less than what Mr. Miller, the OMB Director, stated. It is $63 million less than immediate payment. It is $400 million less in future royalties. There is a provision which purports to give us another $84 million, which we are due.

But—and listen to this—on the $84 million which we are due, we get 3 percent of it for each of the next 5 years. That does not even keep up with inflation. We get 7 percent of it for 5 years thereafter, and 10 percent a year for 5 years thereafter.

If you put that through your computers, as we have done—we have a mathematician-physicist on the staff—he tells us it is worth about 50 cents on the dollar for that $84 million. That is for Louisiana's share, and the same thing is true for other States.

So what we have, Mr. President, is a much smaller pie with a much greater chance, in my view, of that pie getting killed and, if the pie gets killed, no commitment from the administration that they would give us the deal in another context.

As the Senator from Idaho candidly said, what we may do is end up with this as a new starting point for the next negotiations.

I am sorry to say, Mr. President, that negotiating with this administration has not been a very happy, productive kind of negotiation because you either cannot get through or, once you get through and make a deal, they will not stick to it.

Mr. President, I hope the House will accept this. I am urging my friends in the House to do it because we need the money so badly.

I would say finally, Mr. President, that I am sorry that this thing has sort of slid downhill into what I regretfully say is personal relations and politics, which I think has been unworthy of our delegation and unworthy of some of the longstanding relationships we have in this body. When you cannot get information between colleagues, when there is political advantage taken with risks to the State, I would say that it is regrettable.

I will say that in my own State there are projects outside of the district of Senate candidates where Senate candidates will go to those districts and take credit for the projects, down in New Orleans, up in Monroe. Mr. President, we have never had that in my State, and we should not have it.

I say it now not to have to repeat those kinds of things.

Mr. President, I will soon be the senior Senator in this body from my State, and I hope we are going to have the kind of relationship, whoever is elected, that we do not take petty partisan advantage, go over and take credit for somebody else's project. I am afraid it is reaching somewhat epidemic proportions, Mr. President.

Mr. President, last week I told this body about a resolution that I and the distinguished Senator from Vermont had sent around to all Senators with a "Dear Colleague" letter. Three days later, before we had a chance to get the "Dear Colleague" letter back, we found the resolution introduced by someone else.

I stated a little poem at that time. I will read it now because I know everybody is interested in hearing a recount of that poem. It was entitled "Ode to Johnston-Leahy." It says:

A rose by another name may smell as sweet,
But our bill without our names would not be as neat.
We mailed our Dear Colleague on June 29th,
And were surprised on the 30th to find ours last in line.
But we will stand not on ceremony though our pride might be battered,
Imitation, after all, should make us feel flattered.
S. Res. 312 we'll join and offer praise aplenty,
For it is exactly the same as S. Res. 320.
Together the Budget Committee we all can now pester,
For bipartisan defeat of this year's sequester.

That was last week or a week ago, Mr. President. This week, with a new deal, a new 8(g) deal, which I strongly identified with on this side of the aisle, on this side of the Capitol, should I say, because I ate with it, I slept with it, I nursed it, I talked to every single Senator in this body about 8(g), then suddenly it is wafted off and talked about at the White House and somebody else has their name on it. It is a replay of a couple of weeks ago.

But it shall not escape the bard's poem. So I have a new poem, Mr. President, to read about 8(g). This is entitled "Owed to 8(g)."

Owed is spelled o-w-e-d. The poem goes like this.

OWED TO 8(g)

If my colleagues will listen, I want them to hear
How the slippery "8-g" deal finally went queer.
In Louisiana the Reagan campaigns were both big hits
The voters chose him over Grits and then Fritz.
The Administration's gratitude it soon did reveal:
They consistently opposed Louisiana's 8-g deal.
The Congress said Louisiana's share was a billion plus
While the President's men said less than half that's a must.
Later Jim Miller said before the Appropriations Committee
Drop pre-78 leases and a deal we'd see.
"OK", we said, that compromise seems fair.
But give Johnston and Breaux credit?—He wouldn't dare.
So back to the drawing board Miller did go,
But this time with only Moore and Republicans in tow.
He said "Cut back the amount, restructure the deal.
Make it look different and the credit we'll steal."
Off to the White House they eagerly did go—
For a picture with the Great Communicator the press to show.
Yes, we need the money, so "yes" we'll scream
Though we're disappointed at how stingly they seem.
We'll be getting the check now 'most any day
But don't expect us "Thank you" to say
'Cause we feel like the victim of some slick pickpocket
We might have done better on the Federal court docket.

There's a moral to this game of political chess:
With Breaux you get more, but with Moore you get less.

Mr. President, I yield the floor.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, as I understand, there is no time remaining on the amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Is there any time on the resolution itself?

The PRESIDING OFFICER. We are now considering an amendment between the Houses. There is no bill, per se, before the Senate.

Mr. JOHNSTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JOHNSTON. Is it now appropriate to offer the amendment which I mentioned earlier?

The PRESIDING OFFICER. It is now appropriate to offer that amendment.

AMENDMENT NO. 1674

Mr. JOHNSTON. Mr. President, I previously sent that amendment to the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1674 to amendment numbered 1673.

Mr. JOHNSTON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment add the following:

"Notwithstanding any other provision of this Act, the amounts due and payable to the State of Louisiana prior to October 1, 1986, under Subtitle A of Title VIII (Outer Continental Shelf and Related Programs) of this Act shall remain in their separate accounts in the Treasury of the United States and continue to accrue interest until October 1, 1986, at which time the Secretary shall immediately distribute such sums with accrued interest to the State of Louisiana."

Mr. JOHNSTON. Mr. President, all this amendment does is delay the receipt of the moneys due only to the State of Louisiana until October 1. In the meantime, they are to accumulate interest as the fund is now doing. The reason for the delay until October 1 is that the Louisiana Legislature has passed a constitutional amendment by joint resolution which provides an elaborate framework for dedicating this money from 8(g) to education. On September 27, there will be a Statewide election to approve whether or not that framework for dedication of this money to education shall be approved by the people.

I believe that the people of the State ought to have the right to vote on that before the money is spent for other purposes. That is exactly what this amendment does. It does not affect any other State at all, it does not cost any money other than the money that would be drawn by interest on the account in the meantime. It does not increase or decrease the amount used in the State of Louisiana.

Mr. WILSON addressed the Chair.

Mr. DOMENICI. Mr. President, I yield—we have 30 minutes on amendments. I have half the time.

Mr. WILSON. Mr. President, actually, I was going to ask a question of the Senator from Louisiana.

The PRESIDING OFFICER. Does the Senator from Louisiana yield?

Mr. JOHNSTON. Yes, Mr. President, I yield.

Mr. WILSON. I thank the Chair.

My question to my friend from Louisiana is, does his amendment have the effect of securing not only for Louisiana but for all of the coastal States those rights to share with the Federal Government those revenues based upon the provisions that were contained in the House version?

Mr. JOHNSTON. No. Mr. President, I tell my friend from California that the amendment presently pending simply says that that share of revenues which would come to Louisiana under the amendment as introduced by the distinguished Senator from Idaho—Louisiana's share is simply delayed until October 1. That is all the instant amendment does, it simply delays that share until October 1. It does not affect California in any way.

If the Senator has a question about what the compromise amendment does, the underlying amendment, I would be happy to reply to that. But the amendment I just offered simply delays Louisiana's share.

Mr. WILSON. I thank my friend from Louisiana. I thank the Chair.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, will the Senator from Florida yield me 2 minutes?

The PRESIDING OFFICER. The Senator from Louisiana controls the time.

AMENDMENT NO. 1674, AS MODIFIED

Mr. JOHNSTON. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The amendment will be so modified.

The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1674 as modified.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the Bill add the following: "Notwithstanding any other provision of this Act, the amounts due and payable to the State of Louisiana prior to October 1, 1986, under Subtitle A of Title VIII (Outer Continental Shelf and Related Programs) of this Act shall remain in their separate accounts in the Treasury of the United States and continue to accrue interest until October 1, 1986 except that the $572 million set forth in section 8004(b)(1)(A) shall only accrue interest from April 15, 1986 to October 1, 1986, at which time the Secretary shall immediately distribute such sums with accrued interest to the State of Louisiana."

Mr. JOHNSTON. Mr. President, this amendment simply makes clear that the interest shall accrue from April 15, 1986, and thus to make it revenue neutral.

I also wanted to make clear, Mr. President, that it is not the intent of this amendment to give any window for litigation but rather it is expected that so far as I know the State will accept this as a settlement, but in any event the court is not going to proceed with a trial of the case during this period prior to October 1 because this will be considered to be a final settlement in Louisiana when and if it is approved, and I hope it will be approved.

Mr. McCLURE. Mr. President, will the Senator respond to a question?

Mr. JOHNSTON. Yes.

Mr. McCLURE. I think the Senator has already responded to the question I was going to ask. In the form that the distribution is in of acceptance by the States does that acceptance of the money release the claims and settle the litigation? Since there will be a delay in the disbursement of the funds in the case of the State of Louisiana, there is no way in which that triggers prior to the acceptance of money under the current status of the proposed legislation.

Is there any likelihood or possibility that it could be arranged with the State of Louisiana in order to set this at rest that the State execute a release before they get the money in effect to settle the question whether or not there is litigation? Is that something worth pursuing with the State of Louisiana?

Mr. JOHNSTON. I say to my friend from Idaho that I would not think it would be necessary because I think the Governor of our State has already endorsed the settlement. The judge is not going to proceed with the trial. So I really do not think that is necessary. But it certainly could be pursued. My

guess is that the Governor would sign such a release if offered to him.

Mr. McCLURE. I understand and I appreciate the comment of the Senator from Louisiana, because there is some concern that this period not be used. There is no way in which the Senator from Louisiana and I can make guarantee what the State government of Louisiana would do, although the Senator from Louisiana is certainly in a better position to express an opinion than I would be as to what they would be likely to do.

Mr. JOHNSTON. I might say to the Senator from Idaho I have not talked to Judge Mintz. Having not talked to him, I can absolutely guarantee he is not going to proceed with this trial in the face of an impending payment on October 1.

Mr. McCLURE. I thank the Senator from Louisiana.

I think the colloquy here on the floor should very clearly indicate that we intend that this does not create that window of opportunity that the Senator from Louisiana has described. It is simply a question that deals with the other question with respect to the use of the proceeds once Louisiana gets the money.

I thank the Senator for his response.

Mr. JOHNSTON. I thank the Senator.

Mr. President, I yield back the remainder of my time.

Mr. DOMENICI. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment, as modified, of the Senator from Louisiana.

The amendment (No. 1674), as modified, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I have a question for the distinguished Senator from Idaho, the chairman of the Energy Committee.

My understanding is that section 7201 of this legislation—shared energy savings—would allow a Federal agency, without further congressional action, to enter into a contract for energy savings that might result in permanent improvements to Federal lands or property. The agency may provide in the contract that it owns the improvements after they are made or has the option to purchase them at the end of the term of the contract. These improvements on Federal property might range from additional insulation in a building to installation of new energy efficient boilers. Is that correct?

Mr. McCLURE. Mr. President, if the Senator will yield, yes, that is my understanding.

Mr. JOHNSTON. I thank the Senator.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1675

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 1675.

On page 3F, on the third line, strike the "s" on the end of the word "subtitles" and strike "B and".

Mr. DOMENICI. Mr. President, will the distinguished Senator yield?

Mr. WILSON. I yield.

Mr. DOMENICI. Mr. President, the time I have in opposition will be handled by the distinguished Senator from Idaho, the chairman of the Energy Committee.

The PRESIDING OFFICER. The Senator has the right to make that designation.

The Senator from California.

Mr. WILSON. Thank you, Mr. President.

Mr. President, I offer this amendment on behalf of myself and my colleague, Senator CRANSTON.

We do so not only for ourselves or for our State of California, but, as I will indicate in these brief remarks, on behalf of all coastal States concerned with having an adequate voice in the planning of the development of their own coastal zones.

Mr. President, I am proposing an amendment that effectively adds back to the leadership amendment the changes to section 19 of the Outer Continental Shelf Lands Act of 1978 that were adopted by the House and subsequently stricken by the leadership in the proposal that is before us now.

These changes to section 19 of the Outer Continental Shelf Lands Act, changes which were substantively agreed to by the reconciliation conference committee last December, are changes that relate directly to the rights of affected coastal States to have their voices heard by the Secretary of the Interior in the planning of OCS oil and gas leases.

Section 19 is the provision of the Outer Continental Shelf Lands Act that requires the Secretary to coordinate and consult with affected States and local governments.

It requires the Secretary to accept the recommendations of the Governor of the affected State with regard to a proposed lease sale, provided that those recommendations strike a reasonable balance between the national interests and the well being of the citizens of the affected State.

The Secretary is required by existing law to make a determination of the national interest but he is required to do so within the context of a very loosely defined standard that requires that his determination be made "in a balanced manner."

Unfortunately, some Secretaries may not within that broad standard give adequate consideration to the legitimate interest of the States.

The Secretary's interpretation of what constitutes national interest may very well, and has in certain instances, allowed him to unjustly override the stated concerns of the affected Governors and State governments in a number of different lease sales.

Let me cite just a few examples:

Lease sale 53 off California in 1981 was one in which the Governor recommended deletion of 32 out of the 115 tracts that were proposed for sale by the Secretary. The Secretary rejected these recommendations in toto. When California then challenged the Secretary's decision, the court held that the Secretary had met "the bare technical requirements of the statute but quite clearly violated the spirit of the act."

The very next year, in 1982, the Governor recommended that 16 full tracts and 18 partial tracts, out of a total of 164 proposed by the Secretary of be offered for sale, be deleted from the sale and that additional stipulations be added for the other tracts. While the Secretary agreed to delete eight tracts, all other recommendations were rejected. When California again sued, the court granted a preliminary injunction based in part on its finding that the State had raised a serious question as to whether the Secretary had given the Governor's recommendations full and fair consideration.

It is my understanding that New Jersey, in an August 1982 lease sale; Florida, in two lease sales in 1983; Louisiana, in an April 1984 lease sale; Texas, in a July 1984 lease sale; and Massachusetts, in a September 1984 lease sale, all encountered similar problems in securing the cooperation of the Secretary.

Mr. President, these examples make clear that it has become evident over the last several years that the hand of the State needs to be strengthened in the planning of these OCS land sales. The legitimate interests of State government have not been adequately listened to nor heeded, and the result

has been an injustice directly in contravention of Congress' stated intent in requiring the consultation that, in fact, the Outer Continental Shelf Lands Act seeks as protection for State interests.

The amendment that Senator CRANSTON and I are proposing would change the standard for the Secretary in making his determination of national interest. The language that we are proposing expands on the existing requirement in law that the Secretary make his detemination of national interest in a balanced manner by requiring that the Secretary "equally weigh the need for exploration, development, and production of oil and gas with the need to protect other resources and uses of the coastal zone and the marine environment."

This new standard would make clear that the Secretary cannot, as has occurred in the past, cavalierly dismiss or discount the concerns of Governors of coastal States on the basis of heretofore vague definitions of national interest, and the Secretary must, as he should, give equal weight to consideration of State interests in their own coastal zone.

This amendment also requires that the Secretary provide written explanations, that he document the support for his position, and that he allow the decision to be reviewed according to the Administrative Procedure Act. The standard of review under the Administrative Procedure Act slightly expands on the existing standard in the OCSLA of arbitrary and capricious conduct by adding the words that the Secretary, in making his decision, shall not engage in "an abuse of discretion" or in any other way ignore the requirements of the law that regard the decision that he is charged with making under the Outer Continental Shelf Lands Act.

Mr. President, these changes to section 19 of the act that I have described here are important changes. They are necessary in order that affected coastal States can have the voice and the protection required, if they are to receive anything that is real protection rather than lip service in the planning of the Outer Continental Shelf lease sales off their State shores.

With minor modifications, this was the language agreed to by the reconciliation conference committee last December. It was again adopted by the other body in its most recent consideration of this issue.

So, Mr. President, if we are to do more than give lip service to the legitimate requirements of State governments, including their economic interests in planning on-shore industries, then we have got to secure the changes that we are offering here today.

Mr. President, let me make clear what is at stake here is not safeguarding the landscape. It is not protecting the view. This is not an effort bent upon indulging a certain esthetic elitism, as critics of coastal protection sometimes term it.

Local government officials have come to the senior Senator and to myself. They have said:

> We need protection of our employment base. If we are going to put people to work in a steadily expanding area, an area that is beset by unrelenting population explosion, it does not help us if we find that, where we are threatened with violation of clean air standards, we cannot gain permits for new jobs because of the fact that we will suffer an impairment, a further impairment, in air quality because of what results from the rigs offshore.

The balancing that is necessary, Mr. President, for jobs, for the economic welfare of coastal States, requires that such considerations be taken into account, not merely stated by a Governor to be ignored by the Secretary of the Interior.

And that, Mr. President, is what is at stake here. It is not simply an academic exercise about States' rights, although I think that States' rights in this instance call out for protection, but it was precisely for the reason—although they might not have foreseen Outer Continental Shelf development—that the Founding Fathers in placing States' rights protections in the Constitution specifically sought to do so. If they could not precisely foresee the technology that would pose this threat today, they could at least understand that the federation that they were seeking to achieve for greater elective strength must not be one that threatens the rights of individual States when those State rights are in fact legitimate. They are legitimate. They do require protection. They do not receive adequate protection either under existing law and certainly would not under the leadership proposal.

For that reason, Mr. President, I ask not only the representatives of coastal States who will be directly affected by this matter, but all who believe that States should have adequate protection against whatever good intentions the Federal Government seeks to foist upon them, to support this amendment.

I thank the Chair.

Mr. CRANSTON. Mr. President, I am delighted to join with my friend and colleague from California, Senator WILSON, in this effort to bring some fairness and common sense to the legislation that is now pending. The Republican leadership proposal, crafted in private, partisan meetings between select Senate and White House staff, is disastrous for our State of California and clearly unacceptable to the House—and so is likely to kill the bill if adopted.

The "savings" claimed for the proposal are phony. They depend, for example, on an assumed oil price that is at least 50 percent higher than reality. They assume $24 per barrel will be the price for oil. The price is now somewhere below $15 and dropping.

The proposal is merely an attempt, in reality, to shelter the President from accountability for the consequences of his threatened veto of this bill by sending it back to die in the House instead of requiring a veto, a power this President has often sought but has not been given by the Constitution or the Congress.

It would strip from the bill language specifically approved by both Houses which has no budgetary impact at all but which would give all coastal States and local governments a more effective voice in decisions about developing their coastlines.

My colleague, Senator WILSON, made the very eloquent statement about States rights, and about the need, where it can be done, to give local citizens and local officials a voice in their own affairs. Our approach would do that.

I urge all our colleagues to join this effort to restore some balance to the coastal process and to save the reconciliation bill.

I am delighted to be the original cosponsor of the amendment offered by my colleague and friend from California, Senator PETE WILSON. The Wilson-Cranston amendment would restore to the reconciliation bill language which represents a House-passed modification of language previously adopted by the House which withstood challenge in the Senate when we were debating this issue on its merits when it first arose.

The House modification was an attempt to compromise with administration concerns. The purpose of the amendment we are now offering is to attempt to restore some effectiveness to the voice of coastal States and local governments in their negotiations with the Secretary of Interior regarding oil and gas lease, and along the Outer Continental Shelf of a State's coastal coastline.

The PRESIDING OFFICER. All the time of the proponents have expired.

Mr. CRANSTON. I would like some additional time if that is possible.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. I ask unanimous consent to yield 3 minutes from the opposition to the Senator from California.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE SECTION 19 ISSUE

Mr. CRANSTON. Mr. President, section 19 was added to the OCS Lands Act in 1978 as a part of a major overhaul of that statute. In amending the OCSLA, Congress was attempting to further several goals, one of which was to increase the role of the states in OCS decisionmaking. Indeed, the legislative history clearly indicates that the States were to play a leading role in these matters.

Section 19 was intended to be one of the primary tools to accomplish this goal. It provides that Governors, and local governments through Governors,

could submit recommendations on OCS lease sales and on development and production plans. Interior was required to accept these recommendations if Interior determined that they struck a reasonable balance between the national interest and the well-being of the citizens of affected States. For purposes of section 19, a determination of national interest was based on the desirability of the recovery of oil and gas in a balanced manner and on the findings, policies and purposes of the OCSLA. The basic thrust of section 19 appears to have been that reasonable recommendations from Governors be accepted.

While section 19 appears to vest considerable authority in Governors of affected States, Interior has implemented it in a fashion which limits the impacts of a Governor's recommendation. For example, for lease sale 53 California's Governor submitted a recommendation that 31 tracts be deleted from the sale. Even though Interior's own documents revealed that these tracts contained only 8 percent of the oil in the sale areas, Interior rejected the recommendation. The courts upheld Interior even though they believed it was violating the spirit of the statute. In other cases, such as lease sale 82, Georges Bank, Interior has rejected recommendations that a limited number of tracts be deleted not because of any balancing analysis but simply because industry had expressed an interest in the tracts.

Frequently, Interior will solicit views from States, local governments, the oil industry and public interest groups. However, the solicitation of views is a very different process from consulting with Governors and accepting reasonable recommendations from Governors. Generally, Interior acts as though it may accept or reject at will the views it receives, and frequently, recommendations will be rejected without any modification of the lease sale decision.

The effect of this approach has been twofold. First, it has generated a considerable amount of litigation. Since 1981, California, Massachusetts, Louisiana and Texas have challenged Interior's rejection of section 19 recommendations in litigation.

Second, because of the arbitrary and capricious standard now found in section 19(d), the courts have only a limited ability to compel Interior to accept a Governor's recommendation. In the litigation over lease sale 53, the Federal district court judge stated that Interior had violated the spirit of the act, but the standard of review required great deference to Interior and thus precluded a ruling in favor of the State. *California* v. *Watt* (C.D.Cal. 1981) 520 F.Supp. 1359, 1385-1386. The Court of Appeals for the Ninth Circuit upheld the district court ruling that Interior need only give "some consideration to the relevant factors. * * *" *California* v. *Watt* (9th Cir. 1982) 683 F.2d 1253, 1269. Interior can meet the standard of giving some consideration to relevant factors and still accept or reject recommendations as it wishes.

States have only prevailed in challenges to section 19 determinations in those situations where Interior has made a procedural mistake such as preparing its analysis supporting the decision after the decision was made, lease sale 68—*California* v. *Watt* (C.D.Cal. 1982) 17 .E.R.C. 1711, or failing to do the balancing required in section 19, lease sale 82—*Commonwealth of Massachusetts* v. *Clark* (D. Mass. 1984) 594 F.Supp. 1373.

The amendment that Senator WILSON and I offer will restore a reasonable weight to the recommendation of a State's Governor, without precluding a contrary Federal decision in the national interest if the facts so justify. It will cost no additional funds, and may end up saving money, by restoring balance to the lease sale process and thereby avoiding otherwise inevitable and costly litigation.

I urge its restoration to the reconciliation bill.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I am a little puzzled to know how best to proceed in opposition to the adoption of this amendment because the Senators who offered the amendment in good faith talked about two things which are almost irrelevant to the current discussion. The Senators are concerned about the process that is followed with respect to the Outer Continental Shelf decision making.

I think all of us are concerned about that question. The Senators are concerned about the substance contained in the problems, and the impacts that may occur close to communities in their State of California. I think all of us are aware of those concerns, and wish to respond in a prudent way to it.

The Senators ignore something which I believe is reality; that is, if they pursue and are successful in pursuing this course, the bill is dead. It may well be that the distinguished senior Senator from California would rather that decision rest with the White House, and would like to force a veto of the bill rather than accept the responsibility here.

I can understand that might be his desire. But it does not serve this body well, and the rest of the interests that are of concern about provisions of this legislation.

As I said in my opening remarks earlier with respect to the 8(g) and Outer Continental Shelf issues, we made a reasoned, careful calculation as to what it would cost us in other ways to leave this provision in the bill, and still overcome the administration's objections to the bill.

It was my conclusion that we would be better off to strike this provision, and gain more acceptance of other provisions than to do it the other way around, for two reasons: One is the Senator's own State of California has much at risk, and much at stake with respect to the distribution of Outer Continental Shelf revenues—the 8(g) issue.

I want to remind the Senators from California that while they like the idea of raising this issue, and trying to position themselves correctly in a political sense for their votes in California, on this issue they put at hazard—no, I will make it more strongly than that, they almost guarantee—that the State of California will not receive $338 million from the 8(g) fund immediately, and an additional $289 million over the next 15 years as provided in a bill which the administration has said they will sign if it is not tampered with.

I understand the Senators from California would like to have that money, and this provision. But they are not going to get more now in this bill no matter how much they might like it. It simply is not going to happen.

So you can make your statement on Outer Continental Shelf processes, but if you do make that statement, and are successful, you automatically lose the money for your State.

Yes, you can come back and address the question of the revenues at a later date in another piece of legislation. I suggest you reverse that. Drop the issue of the Outer Continental Shelf processes in section 19, take the decision that is most favorable to your State with respect to the 8(g) revenues, get that done, then come back, and look at the Outer Continental Shelf processes.

Second, there are an awful lot of things being done now in consultation with State governments.

There are six separate opportunities under existing law for any interest, including the State interest, by any person pursuing State interests, the Governor or anyone else, in the process that is now in the statute. It is not the process that is at fault. It is that it is not yielding the results that some people desire with respect to Outer Continental Shelf operations.

The process is working. The result does not please them. So they seek to alter the process in order to try to achieve a different result. How would this work?

It would work by creating endless additional litigation. The courts have not finished the litigation under the existing statute. Then it would change the statute and we would start all over again. That achieves the result that some people want, to have nothing happen.

At some point, somewhere in this process, we have to make decisions. The endless paralysis of the decision-making process serves no one well

except the attorneys who get paid in that process. This should not be that, although some people might suggest that that is the purpose.

Finally, there are other things going on at the present time with respect to the consultation with the appropriate Governors. In the continuing resolution that passed last year that is now the law, there is a negotiating team that was created. That negotiating team is made up of members of the California delegation. Both the Senators from California from time to time participate in those meetings. They are named as participants. They are certainly fully welcome to be there at any time to participate in all of those discussions about how we resolve the OCS question.

Those meetings continue and they have not yet been ended. There will be other such meetings before that negotiating team comes to a conclusion, if indeed it is capable of coming to a conclusion.

The Secretary of the Department of the Interior participates, or his designees participate, in every one of those meetings.

We are hopeful that before those meetings are over there will have been a negotiated settlement of the issue rather than continued litigation and continued political confrontation on the issue.

Mr. CRANSTON. Will the Senator yield?

Mr. McCLURE. I will yield shortly.

Finally, Mr. President, the Secretary of the Interior, Mr. Hodel, I think is making a sincere effort to meet the objections and the concerns of the people of California and the coastal States, the Government and the several governments within California on this matter dealing with Outer Continental Shelf operations.

If you will look at the recent recommendations made by the Governors to the Secretary of the Interior on the OCS Program, I believe it is correct—I would stand corrected if it is not—that the Secretary has accepted every one of the suggestions made by the several Governors involved in these operations.

Whether or not this is going to be continued in a pattern that will satisfy everyone, I cannot tell you. I can guess that there will still be some who, looking at their objective of stopping all operations, will not be satisfied with that result and they will seek some new start of negotiations and new start of litigation.

I would hope that we reject this amendment. I must strenuously urge this amendment be rejected because the process of working out these problems is ongoing. The process of working out OCS operations is continuing. It has not stopped. It is not static. It is not dead. It is still being developed. The appropriate legislative committees—and I chair one such committee—are continuing to look at this problem but we have not yet had any legislative proposal submitted for deliberations, and no hearings on proposed legislation. This was thrown into this bill at the last minute in the House of Representatives to express a political concern in the State of California that is disruptive to Federal land management.

I am sympathetic, because my State of Idaho has two-thirds of our surface area owned and controlled by the Federal Government directly. We would love to have a State veto over Federal actions on those lands. The administration stalwartly resists the notion that the taxpayers of this country should be hostage to the parochial interests of an individual State. So far, those of us who come from public land States have not been able to inject the States into direct control of the operations on the lands within the boundaries of our State.

If we cannot do that, how can we justify giving control to the States or increased control to the States of those lands which lie not just outside but several miles outside the States affected by operations on the Outer Continental Shelf.

Finally, Mr. President, the botton line is and must be that we are advised that if this provision is reinstated the bill is dead.

Mr. CRANSTON. Will the Senator yield on that point?

Mr. McCLURE. I am happy to yield.

Mr. CRANSTON. My information is that the bill is dead if this language proposed by the majority is adopted or stays in the bill because the House will reject it.

Mr. McCLURE. I understand that, and I have been told that the House feels very strongly about this provision. I understand that they do. I would hope that the better part of wisdom would prevail in the House as well as here. You see, I have never given up on the House of Representatives. I still think they are capable of rational judgments. In this instance, I think that the benefits that come to the coastal States in the solution of the 8(g) funding question, the distribution of those funds, leaving to future legislation the questions of Outer Continental Shelf management, is the prudent way for them to react.

As I said earlier, I had to make a judgment in these negotiations: Was it more important to retain this provision or give up on the money in 8(g)? I think there was a direct tradeoff. I elected to settle the 8(g) question once and for all and revisit these questions at a later time.

The legislative committee is certainly capable of doing that. Certainly the House and Senate are capable of doing that.

But if it comes down to a question of whether or not the administration will veto over this or whether the House will kill over this I will guarantee you I know what the administration will do over this provision, if they are telling me accurately. We still have an opportunity to persuade the House to postpone the discussion of the issue.

Mr. WILSON. Mr. President, I ask unanimous consent that an additional 5 minutes be permitted.

The PRESIDING OFFICER. Is there objection?

Mr. McCLURE. Reserving the right to object, and I shall not object, is that 5 minutes equally divided?

Mr. WILSON. Yes.

Mr. McCLURE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. First, let me ask this: The Senator has just stated that the bottom line here is adoption of this amendment he feels will cause the loss of all the other advantages of the reconciliation bill. Is that Senator aware that the Republican chairman of the Finance Committee, the distinguished Senator from Oregon, Senator PACKWOOD, is joining with Senator CRANSTON and me in seeking this amendment? Does he think he would do so if, in fact, he thought it jeopardized the success of the leadership package and the acceptance by the President and the House of this reconciliation package?

Mr. McCLURE. Will the Senator yield?

Mr. WILSON. I yield.

Mr. McCLURE. I do not think that changes the situation at all. I do not know what his judgment might be. But I know what my conferences have been with the administration.

Mr. WILSON. Is the Senator from Idaho also aware that as recently as a few weeks ago the Governor of California, a Republican Governor, one who is on record as favoring a balanced budget, who is clearly not one of those who is seeking flat prohibitions on all Outer Continental Shelf developments, that that same Governor has used language that made headlines in referring to a breach of faith by the Secretary of the Interior?

Mr. McCLURE. I do not know what the Governor of California has said or even what the background of those comments may be, but there has been no breach of faith by the Secretary of Interior of which this Senator is aware. I have followed carefully what he has done over the last year. I have been in every one of the meetings of the negotiating team that has tried to negotiate a solution to this question; that is, trying to negotiate a solution to the OCS question. The Secretary has been there, or his designees have been there, at every meeting, participating fully, listening carefully. I can assure the Senator from California that indeed, it is my belief—and I think it is a fact—that the Secretary of the Interior is trying in good faith to work out the problems that are identified.

Mr. WILSON. Mr. President, I think the Senator might have a better idea had he been present last summer through a series of protracted discus-

sions that did lead to what some of us felt was an agreement.

The point, Mr. President, is very simple: that is simply the most recent example of inadequate attention by a Secretary of the Interior, one you might happen to think to be a perfectly decent human being, but one who is not required, clearly, by existing law to give adequate weight even to consideration of the very balanced views of a Governor of my State who is by no means an opponent of offshore development.

The PRESIDING OFFICER. The time has expired.

Mr. McCLURE. Mr. President, let me yield 1 minute to the senior Senator from California on my time.

Mr. CRANSTON. Mr. President, I would simply like to state that the issue of what is best for the coastal States can best be judged by the attitudes of those who represent the coastal States. It seems clear that the House of Representatives will not accept, this measure if it goes over in its present form. I would like to see it amended so it can be adopted.

This is something like a $17 million savings implicit in this measure if we can get it enacted, and I wonder if the President would choose to veto a bill that would cost that much in money at a time when we need such savings. I would like to see the President given the opportunity to make that decision.

Mr. McCLURE. Mr. President, the President has already indicated what that decision would be. I can understand the standpoint of some that they would rather the President would veto this than have it die in Congress. I persist in the belief that it is good for the country to get this bill passed in a form which the President has said he will sign. I therefore shall continue, and urge my colleagues to continue, to reject the provision.

I yield the remainder of my time to the Senator from New Mexico.

Mr. CRANSTON. Madam President, I ask unanimous consent that the Senator from Massachusetts [Mr. KERRY] be added as a cosponsor to this amendment.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

Mr. PACKWOOD. I am pleased to support the amendment of my colleagues, Mr. CRANSTON and Mr. WILSON, which will strengthen the States' consultative role in offshore leasing and development decisions.

Section 19 of the Outer Continental Shelf Lands Act was designed to give the States a leading role in OCS decisions. However, the section currently gives the Secretary of the Interior too much discretion to discount the recommendations of the States. This disregard of States' interests and unwillingness to conclude effective negotiations has increased pressure for congressionally imposed leasing moratoria and has inspired extensive litigation. Since 1982, 12 coastal States have brought challenges to the current leasing program.

Senator CRANSTON'S and Senator WILSON'S amendment would rectify this situation by compelling the Secretary to give greater weight to reasonable State recommendations. The amendment would insure that the Secretary of the Interior fully account for marine and coastal environmental values when weighing whether to accept or reject a Governor's recommendations. In addition, the Secretary would be required to supply the Governor with a detailed response as to why he rejected any recommendations.

This amendment adds no new steps or delays to the leasing process. Further, the national interest would continue to be fully protected under the new language, since the responsibility would lie with the Secretary to accept or reject the Governors' recommendations.

This amendment reinforces the original intent of Congress that Governors of States affected by Outer Continental Shelf oil and gas development have a leading role in lease-sale decisions. I urge my colleagues to support it.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. DOMENICI. Madam President, has the 2½ minutes the Senator from Ohio had expired?

The PRESIDING OFFICER. Yes, it has.

Mr. DOMENICI. Madam President, I move to lay the pending amendment on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Virginia [Mr. TRIBLE] are necessarily absent.

I also announce that the Senator from Arizona [Mr. GOLDWATER] and the Senator from Maryland [Mr. MATHIAS] are absent on official business.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Missouri [Mr. EAGLETON], the Senator from Iowa [Mr. HARKIN], the Senator from Colorado [Mr. HART], the Senator from Hawaii [Mr. INOUYE], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 35—as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—53

Abdnor	Exon	McClure
Andrews	Ford	McConnell
Armstrong	Garn	Murkowski
Bentsen	Glenn	Nickles
Bingaman	Gorton	Pressler
Boren	Gramm	Pryor
Boschwitz	Grassley	Quayle
Bumpers	Hatfield	Rockefeller
Burdick	Hecht	Rudman
Byrd	Heflin	Simpson
Chafee	Helms	Stennis
Cochran	Humphrey	Stevens
Danforth	Johnston	Symms
Denton	Kassebaum	Thurmond
Dixon	Kasten	Wallop
Dole	Long	Warner
Domenici	Lugar	Zorinsky
East	Mattingly	

NAYS—35

Baucus	Heinz	Packwood
Bradley	Hollings	Pell
Chiles	Kerry	Proxmire
Cohen	Lautenberg	Riegle
Cranston	Laxalt	Roth
D'Amato	Leahy	Sarbanes
Dodd	Levin	Sasser
Durenberger	Matsunaga	Simon
Evans	Melcher	Stafford
Gore	Metzenbaum	Weicker
Hatch	Mitchell	Wilson
Hawkins	Moynihan	

NOT VOTING—12

Biden	Harkin	Mathias
DeConcini	Hart	Nunn
Eagleton	Inouye	Specter
Goldwater	Kennedy	Trible

So the motion to lay on the table was agreed to.

Mr. DOMENICI. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. Will the Senator from New Mexico suspend until the Senate is in order?

The Senator from New Mexico.

Mr. DOMENICI. A parliamentary inquiry, Madam President. If there are no further amendments, what would be the subject matter before the Senate?

The PRESIDING OFFICER. The time has expired on the motion to concur in the amendment. So the vote would be on the amendment.

Mr. DOMENICI. I have no desire to ask for the yeas and nays on the Dole-Domenici-McClure-Packwood amendment. Does somebody desire a rollcall vote?

Mr. BOREN. Madam President, I rise to call the Senate's attention to an issue of great importance to senior citizens all across our Nation.

During consideration of the budget reconciliation bill last year, I offered an amendment dealing with Medicaid eligibility for those people in need of nursing home care. During conference, however, my amendment was removed, along with other Medicare/Medicaid provisions. I would like to briefly review for the Senate the circum-

stances which led to my offering this amendment.

The Department of Health and Human Services, through administrative action, has issued one of the most unreasonable, unworkable and unfair regulations this Senator has encountered in a long time. That regulation, if left standing, will jeopardize the eligibility of thousands of senior citizens across this Nation for nursing home care under the Medicaid Program.

When a Medicaid applicant or recipient who owns his own home is admitted to a nursing home, the value of the residence is disregarded in determining whether he is eligible for Medicaid, provided he intends to eventually return home. However, when it is established that the individual will not be returning home, the value of the residence becomes a resource that can increase his resources beyond the permitted level.

In the past, Federal policy has given such an individual a reasonable amount of time, usually 90 days, to dispose of the property as long as he is making a "bona fide effort to sell." Proceeds from the eventual sale of the house are then used to finance the individual's nursing home care until he has reduced his resources to the allowable level and can again be eligible to receive Medicaid payments.

This policy has provided a reasonable period to determine whether it is realistic to expect a return home. It avoids requiring a patient to give up his home while there is still a chance he may be able to return to it. Once it is determined a return is not feasible, the individual has been given enough time to sell his property at market value, rather than being forced to dispose of it quickly, below market value.

Under this new HHS regulations, however, all this will now be changed. These regulations state that when it is determined a person will not be returning home, the home immediately becomes a resource. A memorandum dated June 3, 1985, from the Health Care Financing Administration to all Regional Administrators states the policy quite clearly:

Medicaid eligibility can no longer be extended to individuals who have excess revenues and who are making a bona fide effort to sell. Medicaid eligibility based on 'bona fide effort to sell' does not exist. Individuals who have excess resources are ineligible for Medicaid.

Imagine the dilemma senior citizens all across this Nation will find themselves in as a result of this new ruling. Given the prospect of being declared ineligible for Medicaid coverage and forced to leave the nursing home, patients may, in desperation, be left with no choice but to dump their homes at greatly reduced prices, just in order to maintain Medicaid eligibility. In many parts of this Nation, certainly in my own State of Oklahoma, the housing market has come to a virtual standstill as a result of the collapse of oil prices, the depression in the agricultural industry, and other factors. Under such circumstances it will be virtually impossible for senior citizens in my State to immediately dispose of their property, even at below-market value.

If there was ever a need for the Senate to act in blocking ridiculous Federal regulations, this is surely it. This is not just an Oklahoma problem, or one that is limited to a particular region of the country. Senior citizens in every State will be affected if these regulations are left intact.

Madam President, my intention was to again offer my amendment to the reconciliation bill we are now considering. In discussions with the chairman of the Finance Committee and the majority leader, however, I understand the delicate nature of the agreement that has been reached with the House and the administration regarding this bill. It has been suggested that I withhold offering my amendment to the reconciliation bill, and consider offering it to another appropriate legislative vehicle in the near future. In addition, I hope the distinguished majority leader and the chairman will join me in urging the administration to defer taking action under this regulation until we in Congress have had a chance to act. I would welcome any comments the majority leader and the chairman might have as to their own feelings on this important matter.

Mr. DOLE. Madam President, I thank the distinguished Senator from Oklahoma for bringing this matter to our attention. Elderly citizens in Kansas, like those in Oklahoma, have faced similar problems.

On December 20, 1985, the Senator from Kansas sent a letter to the Secretary of HHS, which addressed this same issue. I ask unanimous consent that a copy of this letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, December 20, 1985.

Hon. OTIS BOWEN, M.D.,
Secretary of Health and Human Services, Hubert H. Humphrey Building, Washington, DC.

DEAR SECRETARY BOWEN: The Deficit Reduction Act of 1984 (DEFRA) established a moratorium period during which the Secretary of Health and Human Services was directed not to take any compliance, disallowance penalty or other regulatory action against a State because a State in determining eligibility for noncash Medicaid recipients is using an income or resource standard or methodology that is less restrictive than the applicable cash assistance standard or methodology. The moratorium is to run from the date of enactment until 18 months after submission of a required report.

Since the passage of this provision, problems have arisen with the Administration's interpretation of the moratorium. In addition, more recently, a related problem—the issue of the "bona fide" effort of sale—has come to our attention.

As a result, this year's Omnibus Reconciliation Bill of 1985 contains a provision which was added by the Senate Finance Committee, which clarifies the moratorium on your sanction activities. In addition, the provision restores for the duration of the moratorium the previous medicaid policy governing the period when homeownership by an institutionalized individual is permitted and the period of time given for the sale of a home.

Unfortunately, final action was not taken on the Conference report containing this provision prior to our Sine Die Adjournment in December. As a result, the States continue to be in a difficult positioin vis-a-vis their current rules.

In the absence of final Congressional action, I would be interested in learning how the Department might suggest that we resolve this difficult issue. It is clear that a rational policy would provide a reasonable period of time to determine whether it is realistic to expect a patient to return home, and once that determination is made, a recipient should be given enough time to sell their property at its reasonable market value rather than being forced to dispose of it at an unreasonable reduced market rate.

I recognize the need to avoid allowing individuals to qualify for Medicaid inappropriately but believe a reasonable accommodation can be reached here.

I look forward to your response.

Sincerely yours,

BOB DOLE,
Majority Leader.

Mr. DOLE. Madam President, like my distinguished colleague from Oklahoma, I hope that we can find some reasonable solution to this problem. It is certainly my intention to work with him in doing so.

Mr. PACKWOOD. Madam President, I agree that it is not good public policy to force elderly Americans to sell their homes for a fraction of their value in order to qualify for Medicaid. However, we must take great care in revising Medicaid eligibility rules for we run the risk of either, first, denying Medicaid coverage to needy elderly persons on the one hand, or second, granting Medicaid coverage to those not truly needing such coverage.

Although I do not agree with OMB's $1 billion estimate of the cost of such a change, I recognize that we need to address this problem. I will be happy to work with Senators and join in urging the administration to delay its enforcement of the regulation until we can address the problem.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the amendment.

Mr. DOMENICI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion to concur in the amendment.

Mr. METZENBAUM. Is this on the amendment?

Mr. DOMENICI. On the amendment.

Mr. METZENBAUM. Not on the total package?

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Madam President, I would like to ask the distinguished chairman of the Energy Committee a question. If a State declines its 8(g) payment and continues to litigate this issue and eventually loses would it be able to claim the money alloated to it under this amendment?

Mr. McCLURE. No. If a State does not take its payment by April 15, the offer expires and a State forfeits any future claim to that money and will receive only the money, if any, awarded to it from the litigation.

Mr. METZENBAUM. I thank the Senator.

Mr. MURKOWSKI. Madam President, it is my understanding that my colleague from Idaho, the distinguished Chairman of the Energy and Natural Resources Committee, was integrally involved in the discussions with the administration and the Office of Management and Budget which lead to the new OCS 8(g) provisions of this bill. Is that correct?

Mr. McCLURE. That is correct.

Mr. MURKOWSKI. As such, you are in a good position to reflect upon the intent and meaning of this language, are you not?

Mr. McCLURE. That is correct.

Mr. MURKOWSKI. In that regard, I have two provisions of this bill that I would like my colleague from Idaho to comment on. The first of those provisions appears in the proposed section 8(g)(2) of the Outer Continental Shelf Lands Act. Would my colleague please explain the intent and meaning of the language included in the second set of parantheses which begins: "(or, in the case of Alaska, * * *)"?

Mr. McCLURE. I would be happy to indicate the intent of that language. Quite simply it means that there is a period of 7 years in which the pro-rationing according to surface acreage provisions do not apply to leases in Alaska. For leases which do not involve a OCSLA section 7 dispute, that 7-year period begins to run on April 15, 1986, and expires on April 15, 1993. For leases which involve a section 7 dispute and for which an escrow agreement has been entered into pursuant to section 7, the 7-year period begins to run on the date that such dispute is settled or otherwise resolved. The effect of this is that, during the 7-year period, Alaska will receive 27 percent of all revenues derived from the entire area covered by any lease which falls wholly or partially within the 8(g) zone. After the 7-year period revenues will be prorated according to surface acreage. The rationale for this provision is that the other coastal States have experienced the benefit of 7 years of no pro-rationing since 1978. Alaska has not. This provision brings Alaska equal with those other States.

Mr. MURKOWSKI. I thank my colleague for that explanation. The second provision upon which I have a question is that portion of the proposed section 8(g)(5)(A) which describes the manner in which moneys held under a section 7 escrow agreement are to be distributed. It is my understanding that, upon settlement or final resolution of the boundary dispute, all moneys held in escrow are to be distributed pursuant to the formula set forth in the proposed section 8(g)(2) regardless of the terms of any agreement entered into previously by the parties.

Mr. McCLURE. That understanding is correct. When the section 7 boundary dispute is settled, the State will be entitled to 27 percent of all revenues generated by any lease lying wholly or partially within the 8(g) zone as that zone has been defined by the agreement of judgment resolving the boundary dispute.

Mr. MURKOWSKI. I thank my colleague from Idaho. I have one last question. Is it not true that the OCS 8(g) provisions in this bill merely provide an option to the coastal States? In other words, a State may elect to forego receipt of moneys under this bill and continue to litigate the issue.

Mr. McCLURE. That is absolutely true. There is nothing in this bill which requires a State to accept these terms if it believes it can achieve a more favorable result through litigation.

Mr. MURKOWSKI. Madam President, with those understandings, I can support this bill. We now have a budget reconciliation package which is acceptable to the President. It is a package that achieves a good amount of budgetary savings. And it is something that deserves the support of this body. I wish to again thank my good friend from Idaho. His dedication and effort to this issue have been extraordinary. He is to be commended.

Mr. McCLURE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Madam President, the Republican leadership amendment does not improve the reconciliation bill.

The PRESIDING OFFICER. The Senator from California will have to ask unanimous consent for any further debate.

Mr. CRANSTON. Madam President, I ask unanimous consent that I may proceed instead of having a quorum call going on and speak to this measure. I shall be brief.

Mr. DOMENICI. Madam President, reserving the right to object, could the Senator from California tell us how long he will be?

Mr. CRANSTON. About 4 minutes.

Mr. DOMENICI. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Madam President, the Republican leadership amendment does not improve the reconciliation bill.

Rather, it would make a reasonably balanced and attractive reconciliation package into legislation that I cannot support, and that I hope others will not support.

I oppose its deletion of the amendment to section 19 of the OCS Lands Act. This deletion denies the Governors of all coastal States the right even to consult effectively with the Secretary of the Interior with regard to prospective Federal oil and gas leasing along a States coastline, suggests that the administration has proceeded in bad faith with negotiations involving the California coast, and insures a continuation of State-Federal warfare along that coast unless Congress constructively intervenes.

I oppose the one-sided modification in section 8(g), which, without even reading the fine print, will deny my State its fair share of future royalties from oil and gas development in the 8(g) zone.

I oppose the unfair deletion of the coastal revenue sharing provisions. And I oppose the deletion of the provision extending for 1 year the transition to national diagnosis-related group rates for Medicare payments to hospitals.

The Republican leadership wants the Senate to believe that if this amendment is added, the President will sign this bill.

Otherwise, OMB says, the President will veto it. I think that we ought to make the President's day.

I think we ought to send to the White House the version of this bill that has already passed the House, which includes these provisions to which the Senate has previously agreed. That will conclude responsible congressional action.

If the President then chooses to veto the bill, that is his right. And the President can make his decision on whether to veto the bill in full knowledge of the consequences of his action. And in the full view of the American people. Will he reject the $17 billion savings the reconciliation package will provide? I do not think so.

This so-called leadership amendment was crafted in very private negotiations between certain Republican Senate staff members and the staff of

the Office of Management and Budget. And we have the word of one of the Senate negotiators that dealing with OMB on this matter was like talking with people from "another planet."

No committee of the Senate has had an opportunity to consider this amendment. I have had only a brief chance to glance at some of the very complex provisions that directly affect my State. And on one provision alone, the so-called 8(g) amendment, which changes language that was specifically approved by both Houses of Congress, my State could lose, by OMB's estimate, some $600 million. What we have here is an example of the line-item veto at work.

I am told that OMB's estimates of future oil royalties are based on an oil price of $24 a barrel. Current world oil prices are below $15 a barrel, and falling. No one has had an opportunity to get a reading on the effects of this amendment from CBO or from our State officials. All we know is that at the moment OMB's assumption about oil prices is off by a factor of 50 percent, distorting all other numbers in this package. The apparent reason for this erroneous assumption is that it bloats the savings OMB is claiming by a considerable amount.

Just yesterday, the junior Senator from Texas [Mr. GRAMM] told us that using these kinds of estimates was how we got to a $200 billion deficit and that budget discipline depends upon relying exclusively on CBO estimates. And today the Republican leadership asks us to adopt an amendment that CBO has not even seen, that involves billions of dollars, and that uses off-base price assumptions purporting to provide savings no one will ever see.

No Senator who wants to see the reconciliation bill adopted should support this amendment. The terms of the understanding with the White House, and the majority leader can correct me if I am wrong, are that the President will sign the bill only if no change is made in this understanding by either the House or the Senate. But all the information I have from the House leadership is that the House will not accept this amendment.

Thus, passing this amendment with its phony savings assumptions merely sends the bill back to the House to die.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Madam President, a moment ago we permitted the distinguished minority whip to speak for a few moments. I ask unanimous consent that Senator GRAMM from Texas be permitted to speak for 2 minutes at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Madam President, I rise in support of the reconciliation process and of the Dole substitute. In 1981 we were able to use reconciliation for the first time in a meaningful way to reform the budget, to gain control of spending, and to set into place a program that has put 10.5 million Americans to work in permanent, productive, tax-paying jobs for the future. And the miracle process that made that budget process was a process that we now know as reconciliation.

The problem in voting on individual spending bills is that everybody who wants something from the Government is looking over the Congressman's right shoulder, sending letters back home and telling people whether he cares about the old, the poor, the sick, the tired, the bicycle rider, and the list goes on and on. Very seldom is the taxpayer looking over the left shoulder.

But what we were able to do in 1981 was put together a reconciliation package that was big enough, in terms of savings, and important enough, in terms of public policy, that we got Main Street America involved in the budget debate for the first time and, as a result, we made a substantial change in the policy of the Federal Government and the direction of the country.

I support the Dole substitute and will vote for it in the vote for final passage, because I think it is important that we preserve the reconciliation process. But I think it is important that we recognize that the reconciliation bill before us today is a far cry from reconciliation bills of the past that had some real meaning.

Unfortunately, the reconciliation process has been used to bring forward a lot of programs that would never be able, on a freestanding basis, to pass both Houses of Congress and be accepted by the President. We have add-ons in this bill, a bill aimed at saving money, that add billions of dollars to Federal spending, ranging from interest forbearance on black lung, to trade adjustment assistance, to AFDC, to Medicare, to the highway fund—all good and laudable goals, all costing money.

I intend to support the Dole substitute and vote for it. But if the House does not accept the Dole substitute and comes back with a bill with add-ons, I intend to not only try to knock those add-ons off with an amendment but also to go back and knock off the add-ons that we have accepted in the spirit of compromise and that the President has accepted in being willing to sign reconciliation into law and preserve this process.

So I am hopeful that the Dole substitute will be accepted and I will vote for it on final passage.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President in any bill, we do not get everything we want.

The PRESIDING OFFICER. It will take unanimous consent, I say to the Senator from Rhode Island, for any debate.

Mr. CHAFEE. Madam President, I ask unanimous consent that I may speak for 2 minutes.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

Mr. CHAFEE. Madam President, in any measure, of course, there is a sense of compromise. This does not have everything that every one of us wants in it, but I think the important part is we are on the verge of getting reconciliation, which yields great savings not only in this year but, more importantly, in the out years.

So, for that reason I am supporting the reconciliation measure and doing everything I can to forestall amendments that might result in its possible veto by the President.

Madam President, I do believe that this is a good measure. It is not everything that every one of us wants, but it is a major step ahead and it is reconciliation, something we have been trying to get for a long time for this fiscal year.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHILES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Madam President, I ask unanimous consent that I may be permitted to speak for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Madam President, as I understand the situation, I say to Senators, we are ready to adopt the measure that is before us. The majority leader asked me to tell Senators that, immediately after the adoption of it, we will proceed to the water resources bill, which will not only be laid down, but the majority leader hopes that we might indeed complete that bill today. There are not many amendments that anybody knows about. It is a very long-awaited bill and, consequently, he has informed me to tell the Senate there may be votes on the water resources bill which will be called up immediately after disposition of the measure that is before us.

The PRESIDING OFFICER. The measure before us is on the question of the motion to concur with an amendment.

The motion was agreed to.

Mr. DOMENICI. Madam President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further proceedings under the call of the quorum may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDEFINITE POSTPONEMENT OF S. 1567

Mr. STAFFORD. Mr. President, I ask unanimous consent that Calendar Order No. 304, Senate Resolution 207, budget waiver for S. 1567, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

WATER RESOURCES DEVELOPMENT ACT

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 495, S. 1567, the water resources bill.

The PRESIDING OFFICER. Is there objection? Without objection, it so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1567) to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

The Senate proceeded to consider the bill which had been reported to the Committee on Finance, with an amendment:

On page 128, strike line 6, through and including line 18 on page 137, and insert the following:

TITLE VIII—REVENUE PROVISIONS

SEC. 801. SHORT TITLE.

This title may be cited as the "Harbor Maintenance Revenue Act of 1985".

SEC. 802. IMPOSITION OF HARBOR MAINTENANCE CHARGE.

(a) GENERAL RULE.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by inserting after the chapter heading the following new subchapter:

"SUBCHAPTER A—HARBOR MAINTENANCE CHARGE

"Sec. 4461. Imposition of charge.
"Sec. 4462. Definitions and special rules.

"SEC. 4461. IMPOSITION OF CHARGE.

"(a) GENERAL RULE.—There is hereby imposed a charge on—

"(1) any port use, or

"(2) any port maintenance use.

"(b) AMOUNT OF CHARGE.—The amount of the charge imposed by subsection (a) on—

"(1) any port use shall be an amount equal to 0.04 percent of the value of the commercial cargo involved, and

"(2) any port maintenance use shall be an amount equal to $0.005 multiplied by the number of net registered tons of the commercial vessel involved.

"(c) LIABILITY AND TIME OF IMPOSITION OF CHARGE.—

"(1) LIABILITY.—

"(A) PORT USE CHARGE.—The charge imposed by subsection (a)(1) on a port use shall be paid by—

"(i) in the case of cargo entering the United States, the importer,

"(ii) in the case of cargo to be exported from the United States, the exporter, or

"(iii) in any other case, the shipper.

"(B) PORT MAINTENANCE USE CHARGE. The charge imposed by subsection (a)(2) on a port maintenance use shall be paid by the vessel owner.

"(2) TIME OF IMPOSITION.—

"(A) PORT USE CHARGE.—The charge imposed by subsection (a)(1) on a port use described in section 4462(a)(1)(A) shall be imposed—

"(i) in the case of cargo to be exported from the United States, at the time of loading, and

"(ii) in any other case, at the time of unloading.

"(B) OTHER CHARGES.—Any charge imposed by this subchapter not described in subparagraph (A) shall be imposed at the time prescribed by the Secretary in regulations.

"SEC. 4462. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) PORT USE.—The term 'port use' means—

"(A) the loading or unloading of commercial cargo on or from a commercial vessel at a port, or

"(B) the use of any Great Lakes navigation improvement, including any use described in subparagraph (A).

"(2) PORT MAINTENANCE USE.—The term 'port maintenance use' means the use of any port or Great Lakes navigation improvement for—

"(A) the purpose of bunkering, refitting, or repair of a commercial vessel,

"(B) the convenience of a commercial vessel, or

"(C) any similar purpose in connection with a commercial vessel.

"(3) PORT.—

"(A) IN GENERAL.—The term 'port' means any channel or harbor (or component thereof) in the United States, which—

"(i) is not an inland waterway or Great Lakes navigation improvement, and

"(ii) is open to public navigation.

"(B) EXCEPTION FOR CERTAIN FACILITIES.—The term 'port' does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

"(C) SPECIAL RULE FOR COLUMBIA RIVER.—The term 'port' shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstreams side of Bonneville lock and dam.

"(4) GREAT LAKES NAVIGATION IMPROVEMENT.—

"(A) IN GENERAL.—The term 'Great Lakes navigation improvement' means any lock, channel, harbor, or navigational facility located in the Great Lakes of the United States or their connecting waterways.

"(B) CONNECTING WATERWAYS.—The connecting waterways of the Great Lakes of the United States include, but are not limited to, the Detroit River, the Saint Clair River, Lake Saint Clair, and the Saint Marys River.

"(C) SAINT LAWRENCE SEAWAY.—The term 'Great Lakes navigation improvement' shall not include the Saint Larrence Seaway (or any component thereof).

"(5) COMMERCIAL CARGO.—

"(A) IN GENERAL.—The term 'commercial cargo' means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

"(B) CERTAIN ITEMS NOT INCLUDED.—The term 'commercial cargo' does not include—

"(i) bunker fuel, ship's stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or

"(ii) fish or other aquatic animal life caught on a United States vessel and not previously landed on shore.

"(6) COMMERCIAL VESSEL.—

"(A) IN GENERAL.—The term 'commercial vessel' means any vessel used—

"(i) in transporting cargo by water for compensation or hire, or

"(ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

"(B) EXCLUSION OF FERRIES.—

"(i) IN GENERAL.—The term 'commercial vessel' does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

"(ii) FERRY.—The term 'ferry' means any vessel which arrives in the United States on a regular schedule at intervals of at least once each day.

"(7) VALUE.—

"(A) IN GENERAL.—The term 'value' means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

"(B) TRANSPORTATION OF PASSENGERS.—In the case of the transportation of passengers for hire, the term 'value' means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

"(b) SPECIAL RULE FOR HAWAII AND POSSESSIONS.—

"(1) IN GENERAL.—No charge shall be imposed under section 4461(a)(1) with respect to—

"(A) cargo loaded on a vessel in a port in the United States mainland for transportation to Hawaii or any possession of the United States for ultimate use or consumption in Hawaii or any possession of the United States,

"(B) cargo loaded on a vessel in Hawaii or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland, or

"(C) the unloading of cargo described in subparagraph (A) or (B) in Hawaii or any possession of the United States, or in the United States mainland, respectively.

"(2) UNITED STATES MAINLAND.—For purposes of this subsection, the term 'United States mainland' means the continental United States and Alaska.

"(c) COORDINATION OF CHARGES WHERE TRANSPORTATION SUBJECT TO TAX IMPOSED BY SECTION 14042.—No charge shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(d) EXEMPTION FOR UNITED STATES.—No charge shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

"(e) EXTENSION OF PROVISIONS OF LAW APPLICABLE TO CUSTOMS DUTY.—

"(1) IN GENERAL.—Except to the extent otherwise provided in regulations, all ad-

ministrative and enforcement provisions of customs laws and regulations shall apply in respect of the charge imposed by this subchapter (and in respect of persons liable therefor) as if such charge were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

"(2) JURISDICTION OF COURTS AND AGENCIES.—For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the charge imposed by this subchapter shall be treated as if such charge were a customs duty.

"(3) ADMINISTRATIVE PROVISIONS APPLICABLE TO TAX LAW NOT TO APPLY.—The charge imposed by this subchapter shall not be treated as a tax for purposes of subtitle F of this title or any other provision of law relating to the administration and enforcement of internal revenue taxes.

"(f) LIMITS OF NUMBERS OF CHARGES.—For purposes of this subchapter—

"(1) only 1 charge shall be imposed under section 4461(a)(1) with respect to—

"(A) the transportation of the same cargo on the same vessel, and

"(B) the loading and unloading of identical cargo at 1 port, and

"(2) the charge imposed by section 4461(a)(2) shall not be imposed more than 3 times in any calendar year upon any vessel.

"(g) REGULATIONS.—The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to—

"(1) regulations providing for the manner and method of payment and collection of any charge,

"(2) regulations providing for the posting of bonds to secure payment of any charge,

"(3) regulations exempting any transaction or class of transactions from the charge imposed by this subchapter where the collection of such charge is not administratively practical, and

"(4) regulations providing for the remittance or mitigation of penalties and the settlement or compromise of claims.".

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 of the Internal Revenue Code of 1954 is amended by inserting the following before the item relating to subchapter D:

"Subchapter A. Harbor maintenance charge.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1986.

SEC. 803. CREATION OF HARBOR MAINTENANCE TRUST FUND.

(A) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HARBOR MAINTENANCE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Harbor Maintenance Trust Fund', consisting of such amounts as may be—

"(1) appropriated to the Harbor Maintenance Trust Fund as provided in this section,

"(2) transferred to the Harbor Maintenance Trust Fund by the Saint Lawrence Seaway Development Corporation pursuant to section 13(a) of the Act of May 13, 1954, or

"(3) credited to the Harbor Maintenance Trust Fund as provided in section 9602(b).

"(b) TRANSFER TO HARBOR MAINTENANCE TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN CHARGES.—There are hereby appropriated to the Harbor Maintenance Trust Fund amounts equivalent to the charges received in the Treasury under section 4461 (relating to harbor maintenance charge).

"(c) EXPENDITURES FROM HARBOR MAINTENANCE TRUST FUND.—Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures for—

"(1) payments described in section 607 of the Water Resources Development Act of 1986 (as in effect on the date of enactment of this section), and

"(2) payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on the date of enactment of this section).".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1954 is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Harbor Maintenance Trust Fund.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1986.

SEC. 804. INLAND WATERWAYS TAX.

(a) IN GENERAL.—Subsection (b) of section 4042 of the Internal Revenue Code of 1954 (relating to tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—The tax imposed by subsection (a) shall be determined from the following table:

"(1) USES BEFORE 1988.—

"If the use occurs— | The tax per gallon is—

After September 30, 1983, and before October 1, 1985 ..... 8 cents

After September 30, 1985, and before January 1, 1988 ..... 10 cents.

"(1) USES AFTER 1987.—

"If the use occurs during calendar year— | The tax per gallon is—

1988	11 cents
1989	12 cents
1990	13 cents
1991	14 cents
1992	15 cents
1993	16 cents
1994	17 cents
1995	18 cents
1996	19 cents
1997 and thereafter	20 cents.".

(b) FUEL USE ON TENNESSEE-TOMBIGBEE WATERWAY SUBJECT TO INLAND WATERWAY TAX.—Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following:

"(27) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on April 1, 1986.

SEC. 805. INLAND WATERWAYS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding at the end thereof the following new section:

"SEC. 9506. INLAND WATERWAYS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Inland Waterways Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Inland Waterways Trust Fund amounts equivalent to the taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Inland Waterways Trust Fund shall be available, as provided by appropriation Acts and subject to the provisions of section 501 of the Water Resources Development Act of 1985 (as in effect on the date of enactment of this section), to the Secretary of the Army to be expended for construction, rehabilitation, modification, and post-authorization planning of navigation lock and dam projects (or any component thereof) on the inland and intracoastal waterways of the United States which are authorized in sections 502 and 504(e) of such Act (as in effect on the date of enactment of this section).".

(b) CONFORMING AMENDMENTS.—Sections 203 and 204 of the Inland Waterways Revenue Act of 1978 (relating to Inland Waterways Trust Fund) are hereby repealed.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"Sec. 9506. Inland Waterways Trust Fund."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on April 1, 1986.

(2) INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (wherever appropriate) a reference to the Inland Waterways Trust Fund established by this section.

SEC. 805. SAINT LAWRENCE SEAWAY EXPENDITURES AND REBATES OF TOLLS.

(a) IN GENERAL.—The Act of May 13, 1954 is amended—

(1) by striking out "and" at the end of paragraph (11) of section 4(a),

(2) by striking out the period at the end of paragraph (12) of section 4(a) and inserting in lieu thereof "; and",

(3) by adding at the end of section 4(a) the following new paragraph:

"(13) shall accept such amounts as may be transferred to the Corporation under section 9505(c)(1) of the Internal Revenue Code of 1954, except that such amounts shall be available only for the purpose of operating and maintaining those works which the Corporation is obligated to operate and maintain under subsection (a) of section 3 of this Act.", and

(4) by adding at the end thereof the following new section:

"REBATE OF CHARGES OR TOLLS

"SEC. 13. (a) The Corporation shall transfer to the Harbor Maintenance Trust Fund, at such times and under such terms and conditions as the Secretary of the Treasury may prescribe, all revenues derived from the collection of charges or tolls established under section 12 of this Act.

"(b)(1) The Corporation shall certify to the Secretary of the Treasury, in such form and at such times as the Secretary of the